No. 87-1682

IN THE

Supreme Court of the United States

October Term, 1987

CHRYSLER WORKERS ASSOCIATION, *et al.*,
Petitioners,

vs.

CHRYSLER CORPORATION; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW LOCALS #371, #1331, #1435, #2035 and #2147,
Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Does exhaustion of internal union remedies toll the running of the statute of limitations explicated in *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151, 103 S. Ct. 2281, 76 L. Ed. 2d 476 (1983)?

2. Did the Sixth Circuit Court of Appeals and/or the District Court deny the Petitioners' right to procedural due process under the Fifth Amendment to the United States Constitution by failing to decide and/or remand the Petitioners' claims not adjudicated on the merits?

3. Did the Sixth Circuit Court of Appeals err when it held that Defendant Chrysler Corporation did not violate its contractual responsibilities with respect to the Ohio Petitioners' claimed transfer rights?

4. Are Petitioners entitled to a jury trial for causes of action based upon 29 U.S.C. Section 185, 29 U.S.C. Section 159, and/or 29 U.S.C. Section 411, *et seq.*?

PARTIES APPEARING BEFORE THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

1. Petitioners Chrysler Workers Association and one hundred and eighty-one separately named individuals who comprise the Ohio and Indiana plaintiffs (also comprising the entire membership of the Chrysler Workers Association), were the plaintiffs before the United States District Court for the Northern District of Ohio, Western Division, and were the appellants before the Sixth Circuit Court of Appeals.

2. The Defendants in the District Court were Chrysler Corporation, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW Local Nos. 371, 1331, 1435, 2075, and 2147, and General Dynamics Land Systems, Inc., f/k/a Chrysler Defense, Inc. The dismissal of General Dynamics by the District Court was not challenged at the Court of Appeals level. Therefore, Chrysler Corporation, the UAW International Union, and the UAW Local Unions were the only appellees before the Court of Appeals. The respondents in the petition *sub judice* are also Chrysler Corporation, the UAW International Union, and the UAW Local Unions.

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PRAYER

Petitioners, Chrysler Workers Association and the individually named plaintiffs, respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Sixth Circuit.

OPINION BELOW

The Opinion of the United States Court of Appeals for the Sixth Circuit is reported as *Chrysler Workers Association, et al. v. Chrysler Corporation, et al.*, 834 F.2d 573 (6th Cir. 1987) (Appendix, p. A1).

The judgment rendered in the United States District Court for the Northern District of Ohio occurred on April 17, 1986, pursuant to an Opinion rendered by the Honorable John W. Potter granting Defendants' motions for summary judgment. The Opinion was unreported and unpublished (Appendix, p. A24).

JURISDICTIONAL STATEMENT

Petitioners' original complaint was an action for legal, equitable, declaratory, and injunctive relief under the Labor Management Relations Act of 1947, as amended, 29 U.S.C. Section 141, *et seq.* Jurisdiction for this action is founded upon 29 U.S.C. Section 185 and Section 187, 28 U.S.C. Section 1331, and 28 U.S.C. Section 1337.

The jurisdiction of the District Court was also invoked pursuant to 29 U.S.C. Section 412 granting the Court jurisdiction for actions alleging violations of 29 U.S.C. Section 411 *et seq.*, known as The Labor Management Reporting & Disclosure Act.

This Court's jurisdiction is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions and statutes involved in the case *sub judice* are the Fifth and Seventh Amendments to the Constitution of the United States, 29 U.S.C. Section 159, 29 U.S.C. Section 185 and 29

U.S.C. Section 411, *et seq.*, and in pertinent part, are set out as follows:

United States Constitution, Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment VII:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

29 U.S.C. Section 159(a):

> (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect:

Provided further, That the bargaining representative has been given opportunity to be present at such adjustment.

29 U.S.C. Section 185:

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his

capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

29 U.S.C. Section 411 (a)(1) and (a)(2):

(a)(1) Equal rights

Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organizations, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) Freedom of speech and assembly

Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organizations his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided,* That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

STATEMENT OF THE CASE

INTRODUCTION

Petitioners (hereinafter referred to as plaintiffs), contend that Chrysler will not observe their contractual obligations to plaintiffs by failing to: (1) allow plaintiffs to return to their "home" plants, and (2) honor their considerable Chrysler seniority. It is contended that the UAW has failed to honor its duty to fairly represent its members and has failed to allow the plaintiffs a meaningful vote in violation of its own constitution and bylaws.

The one hundred and eighty-one individually named plaintiffs, all members of the Chrysler Workers Association, are present or former employees of the Lima, Ohio Tank plant currently owned by General Dynamics Land Systems, Inc. There are two distinct classes of plaintiffs: Ohio plaintiffs and Indiana plaintiffs. These two classes of plaintiffs have the same allegations regarding the actions of the Union and Company; but the facts regarding each are distinct. To best understand the "Questions Presented For Review", a brief outline of the two separate groupings of plaintiffs must be presented.

OHIO PLAINTIFFS

With the slow down in the automotive industry in 1979, Chrysler was forced to indefinitely lay off thousands of employees nationwide. However, Chrysler's need for employees increased during this time at certain non-automotive plants, one such plant being the Lima Tank Plant. The transfer of laid off Ohio Chrysler workers to plants with work was governed by the 1979 Collective Bargaining Agreement between Chrysler

Corporation and the United Auto Workers International Union (hereinafter referred to as the 1979 CBA). Section 65, as amended, of the 1979 CBA, subtitled "Work Opportunity for Laid Off Employees", governed the transfer of the Ohio Chrysler plaintiffs, and also governed the eventual return of said workers to their respective "home" plants.[1] Of crucial importance to these displaced employees was their right to return to their "home" plants since their plant seniority (which governed bidding rights for jobs, retirement and vacations) was dictated by their "home" plant status. While at the Tank Plant, the plaintiffs were placed at the bottom of the seniority list. Most of the plaintiffs enjoyed more than ten (10) years worth of seniority at their "home" plants.

Some Ohio plaintiffs had been employed by Chrysler Corporation at the Toledo Machining Plant in Perrysburg, Ohio. Pursuant to a letter of understanding (Ohio Letter) which modified Section 65 of the 1979 CBA, these employees transferred to the Tank Plant in Lima, then owned by Chrysler Defense, Inc., a wholly owned subsidiary of Chrysler Corporation. Pursuant to the "Ohio Letter", these employees would be allowed to return to their "home" plant in Perrysburg before Chrysler Corporation could begin to hire any new employees off the street for this plant.

The remaining Ohio plaintiffs were employed by Chrysler Corporation in Van Wert, Ohio, in 1979. The situation of the Van Wert, Ohio plaintiffs parallels that of the Perrysburg, Ohio plaintiffs with the exception that the transfer back of these plaintiffs was dictated not by the "Ohio Letter", but an agreement referred to as the

[1] As will be explained below, Section 61 of the 1979 CBA governed the recall of the Indiana plaintiffs.

"Sadie Hawkins Day" agreement. This agreement was also a modification of Section 65 of the 1979 CBA, and was a special provision whereby once each year, on a selected date, work opportunity plaintiffs, such as the Van Wert plaintiffs, were afforded an opportunity to sign up to return to their "home" plant. The Van Wert, Ohio plaintiffs signed up to return to their home plants, but Chrysler in Van Wert, Ohio was not recalling any employees until some time later.[2]

INDIANA PLAINTIFFS

The Indiana plaintiffs did not transfer to the Lima Tank Plant, and were not working at the Tank Plant pursuant to Section 65 of the 1979 CBA, or pursuant to any supplemental modification of Section 65. These workers were simply laid off from the New Castle, Indiana Chrysler plant. The Indiana plaintiffs then applied at the Lima Tank Plant and were hired in off the street as new employees. These plaintiffs argue that pursuant to Section 61 of the 1979 CBA, entitled "Layoff Procedures—Indefinite Layoffs", they should be recalled in line with their seniority irrespective of any work opportunity agreements or amendments.

The New Castle, Indiana Chrysler plant began recalling its laid off employees in June of 1982. The Indiana plaintiffs were passed over for recall in line with their seniority. It was Chrysler and the UAWs' position that these plaintiffs had to wait until the New Castle plant began hiring off the street, pursuant to the "Indiana Letter".[3] The Indiana plaintiffs filed grievances

[2] Once employees make the election to return, that option remains open until the home plant starts hiring.

[3] The "Indiana Letter" is identical to the "Ohio Letter"; however, it only applies to employees who are transfered pursuant to Section 65 of the Collective Bargaining Agreement, not new hires.

protesting the fact that Chrysler had passed them over for recall, and that the "Indiana Letter" was not applicable to their situation. The Indiana plaintiffs utilized the internal appeals procedure for over two years before filing the present law suit.

SALE OF LIMA, OHIO TANK PLANT

In March of 1982, Chrysler Corporation sold all the stock of Chrysler Defense, Inc., to General Dynamics. The subsidiary corporation's name was subsequently changed to General Dynamics Land Systems, Inc. (GDLS). Representatives of the UAW and GDLS have testified that GDLS agreed to abide by the terms of the 1979 CBA, and did not alter plaintiffs' seniority or recall rights that existed under the 1979 CBA.

On May 18, 1982, a "letter of understanding" was entered into between GDLS and the UAW with regard to the status of those employees, including the plaintiffs, working at plants under the Work Opportunity Agreement (Section 65 of the 1979 CBA) that desired to return to their "home" plants. Both GDLS witnesses and UAW witnesses have testified that it was not the intent or the effect of said "letter of understanding" to change or in any way alter or extinguish the plaintiffs' seniority rights that had existed under the 1979 CBA.

On June 7, 1982, a second "letter of understanding" was entered into, only this time between Chrysler and the UAW. This second "letter of understanding" was virtually identical in content to the May 18, 1982 letter between GDLS and the UAW. Again, all the testimony by both Chrysler and UAW witnesses was that it was not the intent of this second "letter of understanding" to alter the rights of the plaintiffs, but only intended to

clarify the 1979 CBA as it applied to individuals working at the Lima Tank Plant pursuant to Section 65 of said agreement.

The UAW held a meeting in early July, 1982, to explain to its membership the effect of the sale of Chrysler Defense, Inc. to General Dynamics. At this meeting, no mention was made of the May 18th or the June 7th "letter(s) of understanding". Also at this meeting, no one informed the plaintiffs that their seniority rights at their "home" plants or their ability to return to their "home" plants had been altered in any way as a result of the sale.

After the sale of Chrysler Defense, Inc., to General Dynamics, the Ohio plaintiffs approached Union and Company officials requesting information as to when they would be recalled to their "home" plants. Neither Union nor Chrysler officials would give these plaintiffs any information regarding their recall rights. Anxious to get answers to their inquires, plaintiffs formed an association called the Full Seniority Committee, the purpose of which was to determine the status of their seniority and/or recall rights. On November 11, 1983, through this association's attorney, the UAW informed the plaintiffs of the existence of the May 18th and June 7th "letter(s) of understanding", and that the plaintiffs' seniority and/or recall rights had been eliminated.

Upon receipt of this letter, the Ohio plaintiffs filed an appeal with the International Executive Board, pursuant to the International Constitution, which was denied as untimely.[4]

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[4] By this time, the Indiana plaintiffs had filed grievances over a year earlier, and had started to exhaust their internal union appeal procedures.

The Ohio plaintiffs also filed grievances pursuant to the 1979 CBA (in addition to, and separate from the grievances filed earlier by the Indiana plaintiffs). The Ohio plaintiffs subsequently received notice from the International UAW informing them that the UAW would not process those grievances. A second association was formed, the Plaintiff Chrysler Workers Association. This Association, and the individually named plaintiffs, including both the Ohio and Indiana plaintiffs, filed the present lawsuit.

The plaintiffs filed a timely complaint with the District Court on March 23, 1984. On April 16, 1986, the District Court granted motions for summary judgment for Defendants Chrysler, the International UAW, the UAW Locals, and General Dynamics, based on statute of limitation grounds, and specifically did not rule on any of the merits of the plaintiffs' causes of action. In the same Opinion, the District Court granted the Unions' motion to strike plaintiffs' jury demand.

On November 25, 1987, the Sixth Circuit affirmed the District Court with regard to the dismissal of the Ohio plaintiffs' cause of action based on 29 U.S.C. §185, but refused to affirm the District Court on its statute of limitations analysis. However, the Sixth Circuit declined to remand the two undecided causes of action based on 29 U.S.C. §§159 and 411, *et seq.*, for determination on the merits. Finally, the Sixth Circuit affirmed the District Court as to the barring of the Indiana plaintiffs causes of action based on the statute of limitations.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I. THE SIXTH CIRCUIT COURT OF APPEALS IS IN CONFLICT WITH THE VIEW EXPRESSED BY OTHER CIRCUIT COURTS THAT THE STATUTE OF LIMITATIONS EXPLICATED IN *DELCOSTELLO V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS,* 462 U.S. 151 (1983), SHOULD BE TOLLED PENDING AN EMPLOYEE'S EXHAUSTION OF INTERNAL UNION GRIEVANCE REMEDIES.

It is requested that this Court resolve the conflict between the Sixth Circuit and other U.S. Circuit Courts that have held that the statute of limitations explicated in *DelCostello v. Int'l Brotherhood of Teamsters,* 462 U.S. 151, 103 S. Ct. 2281, 76 L. Ed. 2d 476 (1983) should be tolled pending an employee's exhaustion of internal union grievance remedies.

If the Court does not resolve this conflict, it places both plaintiffs *sub judice* and future litigants in the following dilemma: if employees do not exhaust internal union remedies, they can be certain that the union will argue that this requires dismissal of the action; on the other hand, if the employees do pursue those remedies, they know that the union will argue that exhaustion would have been futile, and therefore that the statute of limitations should not be tolled during the time it took the employees to exhaust. See *Frandsen v. BRAC,* 782 F.2d 674 (7th Cir. 1986). This "Catch-22" syndrome has been specifically noted by the Seventh Circuit, in *Frandsen,* and in the Eleventh Circuit in *Hester v. Int'l Union of Operating Engineers, et al.,* 818 F.2d 1537 (11th Cir. 1987).

Neither the District Court nor the Sixth Circuit, in the case *sub judice,* have attempted to rationalize their applying the *DelCostello* statute of limitations rule to the Indiana plaintiffs in spite of the fact that the Indiana plaintiffs filed their complaint with the District Court within six months of receiving a decision from the UAW International Executive Board.[5] In fact, plaintiffs' complaint, filed on March 24, 1984, was filed prior to the Public Review Board's decision, the final step in the UAW internal grievance process. The position of the Sixth Circuit in not allowing the Indiana plaintiffs an opportunity to exhaust these internal remedies places these plaintiffs in the aforementioned "Catch-22" situation. Accordingly, this Court should grant Certiorari to resolve this conflict.

In petitioners' "Statement of the Case", it was stated that the Indiana plaintiffs were hired "off the street" by Chrysler to work in the Lima Tank Plant. They were not transferred pursuant to Section 65 of the 1979 CBA. When the New Castle, Indiana Chrysler plant began to recall workers in June of 1982, these plaintiffs fully expected to be recalled pursuant to their level of seniority. When these plaintiffs discovered they had been passed over for recall, in violation of the 1979 CBA, they initiated the proper grievance procedures.

In compliance with Section 22, *et seq.* of the 1979 CBA, entitled "Grievance Procedure", the New Castle plaintiffs filed a written grievance with their UAW Local on August 1, 1982. This grievance was eventually withdrawn by the Union, and on February 22, 1983, the Indiana plaintiffs appealed this withdrawal to the International Executive Board of the UAW. This appeal was subsequently denied on December 1, 1983 (Appendix, p. A68).

[5] Appeal to the International Executive Board is only the second step in the internal union appeal process.

In response to the defendants' motions for summary judgment, plaintiffs suggested that the statute of limitations as to the Indiana plaintiffs should be tolled for the time period in which said plaintiffs pursued their internal union remedies. In response to this argument, the District Court held the following:

> Further, plaintiffs' filing of a grievance did not toll the running of the applicable statute of limitations period. See, e.g., *Vallone*, 755 F.2d at 522.

Chrysler Workers Assoc., No. 84-7273 unpublished op. at 27 (See Appendix p. A62). A review of the decision in *Vallone v. Local Union No. 705, Int'l Brotherhood, et al.*, 755 F.2d 520 (7th Cir. 1985) reveals the inappropriateness of the District Court's reliance on said case. In *Vallone*, the Seventh Circuit refused to toll the statute of limitations because the "grievances which plaintiffs argue[d] tolled the statute of limitations were based on individual pay claims and did not address the claims raised in this suit." *Vallone*, 755 F.2d at 522. The situation in *Vallone* is opposite to the case *sub judice*. It is apparent from the depositions and affidavits filed with the District Court that the Indiana plaintiffs did file suit on the same claims that were raised in their grievances. Thus, the District Court's reliance on *Vallone* was inappropriate. It should also be noted that the dicta in *Vallone* that the District Court apparently relied on has been refuted by its own Circuit Court in *Frandsen*, 782 F.2d at 682.

The Sixth Circuit's response to petitioners' appeal on this issue, also relying on *Vallone*, was that

> it was clear after September 14, 1982, that neither party defendant, claimed by plaintiffs to be responsible to them, recognized a recall right to the New Castle, Indiana Chrysler plant at any time less than six months before this suit was filed.

Chrysler Workers Assoc., 834 F.2d at 581 (Appendix, p. A18). The Sixth Circuit also held that after September 14, 1982, the Indiana plaintiffs were aware that neither the Union nor Chrysler recognized the plaintiffs' grievance. *Chrysler Workers Assoc.*, 834 F.2d at 581 (Appendix. p. A18). As such, the Sixth Circuit suggests that from that date, the statute of limitations began to run.

The Sixth Circuit implied that the Indiana plaintiffs, in 1982, were aware that the Union was not going to process their grievance. This knowledge should not prohibit the Indiana plaintiffs from exhausting the internal union grievance procedures available to them. Such awareness is the case every time a union withdraws a grievance. Unless this conflict is resolved, the Indiana plaintiffs, and future litigants, are caught in the "Catch-22" situation previously discussed.

It is plaintiffs' contention that the decisions of the Sixth Circuit Court of Appeals and the District Court fail to address this tolling issue, and is in direct conflict with other U.S. Circuit Courts and contrary to this Court's holding in *Clayton v. Automobile Workers*, 451 U.S. 679 (1981).

In *Clayton*, the defendants contended that an employee must exhaust the internal union appeals procedures established by his union's constitution before he may maintain his suit under 29 U.S.C. §185 (Section 301 of the LMRA). As a general rule, national labor policy encourages private resolution of labor disputes. The *Clayton* Court, however, provided certain exceptions to this policy:

> However, we decline to impose a universal exhaustion requirement lest employees with meritorious §301 claims be forced to exhaust themselves and their resources by submitting their

> claims to potentially lengthy internal union procedures that may not be adequate to redress their underlying grievances.

Clayton, 451 U.S. at 689. This language suggests that it was this Court's intention to provide the element of futility as a protection to the employee, not to the union. It should be noted that neither defendant has argued, nor has the Sixth Circuit or the District Court found, that the internal appeals in the case *sub judice* were futile. Because there is no finding of futility in the case *sub judice*, exhaustion of internal union remedies is required.

In *Frandsen*, *supra*, the Seventh Circuit discussed the tolling of the statute of limitations while exhausting internal union remedies, and in said discussion held the following:

> [D]uring the pendency of those union procedures, the six-month statute of limitations is tolled, to commence running only when the union procedures are exhausted.

Frandsen, 782 F.2d at 681.

The *Frandsen* Court went one step further, however, when it outlined the "dilemma" that was created by the issue of tolling. The *Frandsen* Court stated the following:

> The question remains, however, how to handle the employee who pursues union procedures that are futile. Should the statute of limitations be tolled where *Clayton* relieves the employee of the exhaustion requirement? The existence of this unresolved question leaves the injured employee with a *dilemma*. If the employee does not exhaust internal union remedies, he can be certain that the defendant union will argue that this requires dismissal of the action. On the other hand, if the employee does pursue those remedies, he knows that the union will argue that exhaustion would have

> been futile, and therefore that the statute of limitations should not be tolled during the time it took the employee to exhaust. This is the "Catch-22" that Frandsen alleges his is caught in. *He argues that under the district court's holding, if Clayton doesn't get him, DelCostello will.* (Emphasis added.)

Frandsen, 782 F.2d at 681. In response to this "dilemma", the *Frandsen* Court held the following:

> [T]he *DelCostello* statute of limitations is tolled by the pursuant of internal union remedies, even where those remedies are ultimately determined to have been futile.

Frandsen, 782 F.2d at 681.

Other U.S. Circuit Courts have also recognized the need for this protection. See *Zuniga v. United Can Company, et al.*, 812 F.2d 443 (9th Cir. 1987); *Hester v. International Union of Operating Engineers, et al., supra.*

In the case *sub judice*, the District Court, and the Sixth Circuit, have failed to address these important protections recognized not only by this Court in *Clayton*, but also the Seventh, Ninth and Eleventh U.S. Circuit Court of Appeals. The result of this is the denial of the right to pursue internal union grievance procedures recognized as a basic protection by this Court.

We urge this Court to resolve this serious conflict. If not resolved, litigants will be required to unnecessarily initiate law suits while pursuing internal union remedies, adding to already over-burdened court dockets; and further, will require such litigants, both plaintiffs and defendants, to exhaust themselves and their resources, thus violating the spirit and intent of *Clayton*.

II. PETITIONERS' WERE DENIED FIFTH AMENDMENT-PROCEDURAL DUE PROCESS BY THE SIXTH CIRCUIT COURT OF APPEALS WHEN IT FAILED TO ADJUDICATE OR REMAND TO THE DISTRICT COURT THE PLAINTIFFS' CAUSES OF ACTION FOR BREACH OF DUTY OF FAIR REPRESENTATION, PURSUANT TO SECTION 9 OF THE NATIONAL LABOR RELATIONS ACT, 29 U.S.C. SECTION 159, AND THE PLAINTIFFS' RIGHT TO VOTE, PURSUANT TO SECTION 101 OF THE LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT, 29 U.S.C. SECTION 411, *ET SEQ.*

Plaintiffs respectfully submit that the Sixth Circuit's decision of November 25, 1987 left unadjudicated plaintiffs' causes of action for breach of duty of fair representation founded on Section 9 of the National Labor Relations Act, 29 U.S.C. §159 (separate and apart from any §301 breach of contract claim), and the plaintiffs' right to vote, pursuant to Section 101 of the Labor Management Reporting and Disclosure Act, 29 U.S.C. §411, *et seq.*

In determining that Chrysler had not breached the 1979 CBA, and in finding that the plaintiffs had no cause of action under 29 U.S.C. §185, the Sixth Circuit held that:

> Whether the Union constitution bylaws may require this submission of an agreement to its members for approval is another matter.

Chrysler Workers Assoc., 834 F.2d at 582 (Appendix, p. A21). This undecided question is at least part of the basis for the two remaining causes of action that remain unadjudicated. The Sixth Circuit's *sua sponte* dismissal of these two causes of action without any form of hearing on the merits, and without giving plaintiffs the opportunity to object to said *sua sponte* dismissal, violates the basic protections guaranteed by the Fifth

Amendment to the Constitution of the United States, and further, goes against this Court's ruling in *Matthews v. Eldridge*, 424 U.S. 319 (1976). *Also see Brock v. Roadway Express, Inc.*, _____ U.S. _____, 107 S. Ct. 1740, 1747 (1987).

The plaintiffs, *inter alia*, had alleged that:

> The Plaintiffs learned, however, that the Defendant, International Union, and/or Defendant, Local Unions, had, subsequent to the sale, of Chrysler Defense, Inc., unilaterally abrogated their rights to return to work at other Chrysler plants, in violation of the existing labor contracts, local bylaws and the international constitution, and in violation of the Defendants' duty of fair representation to the individually named Plaintiffs. The Defendant, International Union, and the Defendant, Local Unions, did not inform the named Plaintiffs of the new secret agreements or allow them to ratify those agreements, which extinguished their right to return to their home plants, as set forth hereinabove.

Plaintiffs' Second Amended Complaint, filed April 17, 1984, paragraph 13. In addition, the plaintiffs had alleged that:

> The aforesaid supplemental agreements were entered into by the International Union and the Defendant, Locals, in violation of the Constitution of the International Union United Automobile, Aerospace and Agricultural Implement Workers of America, U.A.W., adopted at Anaheim, California, June, 1980, and the bylaws of the Defendant, Local Unions, inasmuch as the Plaintiffs were neither informed of the existence or allowed to ratify those agreements, a right guaranteed under the Constitution of the International Union and the Locals' bylaws. The acts of the Defendant, International Union, and the Defendant, Locals, set forth hereinabove, constitute violations of 29 U.S.C. (A) Sec. 411, et sequa, by denying Plaintiffs, as a

> group and individually, equal rights and privileges within the Defendant, Labor Organizations, to participate in and be protected by the Defendant, Labor Organizations.

Plaintiffs' Second Amended Complaint, filed April 17, 1984, paragraph 20. Neither the District Court, nor the Sixth Circuit, considered or rendered a final determination on the merits of the two remaining claims of plaintiffs, as outlined above.

The District Court held:

> Finding the Statute of Limitations issue to be dispositive of this case, the Court does not substantively reach the merits of the remaining issues presented *sub judice*.

Chrysler Workers Assoc., No. 84-7273, unpublished op. at 20 (Appendix, p. A53).

The Sixth Circuit found that reliance upon the statute of limitations for summary judgment was questionable and not warranted under the facts presented. *Chrysler Workers Assoc.*, 834 F.2d at 581 (Appendix, p. A20). Rather, the Sixth Circuit found that the plaintiffs' seniority rights were eliminated by the unratified May and June, 1982 "letter(s) of understanding", and accordingly held that the plaintiffs had no cause of action under §301 of the Labor Management Relations Act, 29 U.S.C. §185 because there was no breach of contract.

Plaintiffs' claims founded on 29 U.S.C. §159 do not require an accompanying breach of contract claim. Both this Court and the Sixth Circuit Court of Appeals have recognized that an employee can maintain an action against his union for breach of fair representation, pursuant to 29 U.S.C. §159, whether or not there is a separate cause of action for breach of contract under L.M.H.A. §301 (29 U.S.C. §185). See *Amalgamated Association etc. v. Lockridge*, 403 U.S. 274 (1971); and

Storey v. Teamsters Local 327, 759 F.2d 517 (6th Cir. 1985). This Court, in *Lockridge,* held that a breach of the union's duty of fair representation is actionable and not pre-empted by the NLRB:

> . . . even if the conduct complained of was arguably protected or prohibited by the National Labor Relations Act and whether or not the lawsuit was bottomed in a collective bargaining agreement.

Lockridge, 403 U.S. at 299. Because the Sixth Circuit was unwilling to embrace the District Court's statute of limitations rationale, these two remaining causes of action of the plaintiffs have not been time-barred and therefore remain to be adjudicated on the merits.

In *Matthews, supra,* this Court held the following:

> This Court consistently has held that some form of hearing is required before an individual is finally deprived of a property interest .... The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo,* 380 U.S. 545 (1965).

Matthews, 424 U.S. at 333. Also see *Tingler v. Marshall,* 716 F.2d 1109 (6th Cir. 1983). In *Tingler,* the Sixth Circuit held that a Court, when faced with a complaint which it believes may be subject to dismissal, must give the plaintiff a chance to either amend the complaint or respond to the notice of intended *sua sponte* dismissal, and if said complaint is dismissed, said court must state its reasons for the dismissal. The Sixth Circuit, in the case *sub judice,* has failed to do either.

The Sixth Circuit has simply refused to allow the plaintiffs the opportunity to be heard on the above-mentioned causes of actions. In a final attempt to have these issues adjudicated, plaintiffs filed a petition for rehearing en banc with the Sixth Circuit to, among other things, decide said issues that had been overlooked. On

January 19, 1988, the Sixth Circuit denied plaintiffs' petition without reason (Appendix, p. A67).

The District Court and the Sixth Circuit Court of Appeals have failed to explain any reasons for dismissal of the two remaining causes of action. This failure by the Sixth Circuit to properly address or remand causes of action properly pled, violates one of the most basic protections of a litigant. Clarification by this Court is critical for both the plaintiffs *sub judice* and future litigants. Plaintiffs urge this Court to accept this petition and review the procedure that deprives plaintiffs of property rights guaranteed by the United States Constitution without a hearing or determination on the merits.

III. THE SIXTH CIRCUIT COURT OF APPEALS WAS IN ERROR WHEN IT HELD THAT DEFENDANT CHRYSLER CORPORATION DID NOT VIOLATE ITS CONTRACTUAL RESPONSIBILITIES WITH RESPECT TO THE OHIO PLAINTIFFS' CLAIMED TRANSFER RIGHTS.

The Sixth Circuit held that "Chrysler did not violate its contractual responsibilities with respect to plaintiffs' claimed transfer rights," and based on that finding, plaintiffs had no cause of action under §301. *Chrysler Workers Assoc.*, 834 F.2d at 582 (Appendix, p. A22). The Sixth Circuit is in direct conflict with other U.S. Circuit Courts with regard to its rationale for holding that Chrysler did not breach its contract with the UAW.

In affirming the District Court's granting of summary judgment as to the plaintiffs' 29 U.S.C. §185 cause of action in favor of the defendants, the Sixth Circuit based its decision on an issue that had not been argued or briefed by any of the parties—including Chrysler. The Sixth Circuit held that the June 7, 1982 "letter of understanding" was a "binding agreement" between Chrysler and the UAW that eliminated the

plaintiffs' Chrysler seniority effective September 14, 1982. *Chrysler Workers Assoc.*, 834 F.2d at 581 (Appendix, p. A20).

There are two issues that must be considered before the Court can find the "letter of understanding" is a "binding agreement" having any particular effect:

1. did the union have the authority to make such an agreement; and

2. was it the intent of the makers of that "agreement" to eliminate the Chrysler seniority of the plaintiffs.

UAW'S AUTHORITY TO BIND ITS MEMBERS

The plaintiffs urge this Court to grant this Petition to resolve the conflict in the Circuit Courts of Appeal as to whether a union has the authority to bind its membership where the proposed agreement has not been ratified and the applicable constitution and bylaws of the union require such ratification. The Sixth Circuit held that:

> Whether the Union constitution or by-laws may require this submission of an agreement to its members for approval is another matter. In any event, we find that *Chrysler had a right to rely upon its agreement with the Union absent clear notice that the Union was acting in bad faith* against the interests of its members. There is no such indication here. (Emphasis added).

Chrysler Workers Assoc., 834 F.2d at 582 (Appendix, p. A21).

Other U.S. Circuit Courts have held that the parties wanting to have the contract enforced are required, based on federal agency principles, to show "apparent authority".

The First Circuit, in *Moreau v. James River-Otis, Inc.*, 767 F.2d 6 (1st Cir. 1985), held that:

> Apparent authority cannot be established merely by showing that the agent claimed authority or purported to exercise it, but must be established by proof of something said or done by the principal on which a third person reasonably relied. The burden of proving apparent authority rests on the party asserting that the act was authorized.

Moreau, 767 F.2d at 9, 10.

In addition, the Third Circuit, in *Goclowski v. Penn Central*, 571 F.2d 747 (3rd Cir. 1978) held that:

> . . . [A]n employer has no right to rely on the appearance of authority of the bargaining agent if it has knowledge to the contrary. This is an elementary principle of the law of agency.

Goclowski, 571 F.2d at 759.

Because none of the parties argued that the "letter(s) of understanding" eliminated the plaintiffs' seniority/home plant rights, neither the District Court, nor the Sixth Circuit considered whether Chrysler had actual knowledge of the Unions' lack of authority. The Sixth Circuit's view that the plaintiffs have to show "clear notice" of "bad faith" in order to invalidate the "letter(s) of understanding" is in direct conflict with the views expressed by the First and Third Circuits. The decision in the case *sub judice* is even at odds with prior decisions of the Sixth Circuit that required the employer to show apparent authority to enforce such an agreement. See *Central States S.E. and S.W. Areas Pension Fund v. Kraftco, Inc.*, 799 F.2d 1098, 1112 (6th Cir. 1986).

The Sixth Circuit Did Not Consider the Intent of the Drafters of the Letters of Understanding

The Sixth Circuit, in the case *sub judice*, held that:

> Plaintiffs argue that the 1982 letter agreements were not intended to alter the 1979 CBA. They did,

> however, clearly terminate any transfer right from the Lima GDLS plant to a Chrysler home plant by September 14, 1982.

Chrysler Workers Assoc., 834 F.2d at 580 (Appendix, p. A17). The Court did not consider the fact that all of the defendants' witnesses testified that the 1982 "letter(s) of understanding" were not intended to eliminate, or in any way alter the plaintiffs' right to transfer back to their home plants.

This Court, in *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960), held the following:

> . . . "[I]t is not unqualifiedly true that a collective-bargaining agreement is simply a document by which the union and employees have imposed upon management limited, express restrictions of its otherwise absolute right to manage the enterprise, so that an employee's claim must fail unless he can point to a specific contract provision upon which the claim is founded. There are too many people, too many problems, too many unforeseeable contingencies to make the words of the contract the exclusive source of rights and duties. One cannot reduce all the rules governing a community like an industrial plant to fifteen or even fifty pages.

United Steelworkers, 363 U.S. at 579. The Sixth Circuit, in *UAW v. Yard-Man*, 716 F.2d 1476 (6th Cir. 1983), has also stated that:

> The intended meaning of even the most explicit language can, of course, only be understood in the light of the context which gave rise to its inclusion.

Yard-Man, 716 F.2d at 1479. See also *Oddie v. Ross Gear & Tool Co.*, 305 F.2d 143, 151 (6th Cir. 1962), wherein the Court held that in the construction of contracts, the court must give great weight to the construction which the parties themselves have given to the contract as shown by their actions thereunder.

Because the Sixth Circuit was in effect ruling on defendants' motion for summary judgment,

> Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor. *Adickes,* 398 US, at 158-159, 26 L Ed 2d 142, 90 S Ct 1598.

Anderson v. Liberty Lobby, Inc., _____ U.S. _____, 106 S. Ct. 2505, 2513, 91 L. Ed. 2d 202, 217 (1986).

The Sixth Circuit did not even consider the evidence indicating the intent of the parties (the defendants' own witnesses, not the plaintiffs') when rendering its ruling regarding the effect of the June 7, 1982 "letter of understanding."

We urge this Court to accept this Petition to resolve the conflict that exists regarding whether unions have apparent authority to bind its members in the absence of a "clear notice" of "bad faith"; and to resolve the issue of whether the Court can ignore the intent of the authors of a collective bargaining agreement.

IV. PLAINTIFFS ARE ENTITLED TO A JURY TRIAL UNDER §301 OF THE LABOR MANAGEMENT RELATIONS (29 U.S.C. §185), FOR THE PLAINTIFFS' FAIR REPRESENTATION CLAIM PURSUANT TO 29 U.S.C. §159, AND/OR FOR PLAINTIFFS' RIGHT TO VOTE, PURSUANT TO 29 U.S.C. §411, *ET SEQ.*

The right to a jury trial is guaranteed by the Seventh Amendment and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care. *Dimick v. Schiedt,* 293 U.S. 474, 486 (1935).

It is within this framework that the right to a jury trial in actions invoking 29 U.S.C. §159, 29 U.S.C. §185, and 29 U.S.C. §411 should be viewed.

In *Curtice v. Loether, et al.*, 415 U.S. 189 (1974), this Court held the following:

> Whatever doubt may have existed should now be dispelled. The Seventh Amendment does apply to actions enforcing statutory rights, and requires a jury trial upon demand if the statute creates legal rights and remedies enforceable in any action for damages in the ordinary Courts of law.

Curtice, 415 U.S. at 194.

The Seventh Amendment guarantees a trial by jury in "suits at common law where the value of the controversy shall exceed $20." The merger of law and equity, accomplished by the adoption of the Federal Rules of Civil Procedure in 1938, made the scope of the right to a jury difficult to determine in cases which contain both legal and equitable issues. Citing *Beacon Theaters, Inc. v. Westover*, 359 U.S. 500 (1959), and *Dairy Queen, Inc. v. Wood, U.S. District Judge, et al.*, 369 U.S. 469 (1962), the Supreme Court in *Ross, et al. v. Bernhard, et al.*, 396 U.S. 531 (1970), stated:

> Where equitable and legal claims are joined in the same action, there is a right to a jury trial on the legal claims which must not be infringed either by trying the legal claims as incident to the equitable ones or by a court trial existing of a common issue existing between the claims. The Seventh Amendment question depends on the nature of the issue to be tried rather than the character of the overall action.

Ross, 396 U.S. at 537, 538.

Applied to the cases arising under 29 U.S.C. §159, §185 and §411, it is necessary to determine the nature of the cause of action to decide if the Seventh Amendment

right attaches. Even if the overall character of this particular case is equitable, the right to a jury exists if these is an issue that is legal in nature. *Ross, supra,* provides a three prong test to determine the "legal" nature of an issue. It is necessary to consider "first, the pre-merger custom with reference to such questions; second, the remedy sought; and third, the practical abilities and limitations of juries." *Ross,* 396 U.S. at 538, note 10.

In determining the pre-merger custom, when a suit is brought under a statutory right of action, it is appropriate to determine the nature of the issue presented by recognizing an analogy to a common law cause of action. *Curtice.*

In a Hybrid §301 action, the plaintiff's suit against his employer is for breach of the collective bargaining agreement, which is merely a breach of a contract claim, of which there was a cause of action clearly recognized at common law, and of which there is a close and obvious analogy. *DelCostello.* The breach of a contract claim is legal in nature and one historically triable to a jury. *Cox v. C.H. Masland & Sons, Inc.,* 607 F.2d 138 (5th Cir. 1979).

The plaintiff's suit against the union is for breach of the duty of fair representation. While there was no pre-merger custom with respect to an exclusive bargaining agent's duty of fair representation, because the duty did not exist prior to adoption of the NLRA in 1947, a breach of the duty of fair representation has been characterized as a common law tort, or contract action seeking redress for breach of a legal duty. *Sanderson v. Ford Motor Company,* 483 F.2d 102, 114 (5th Cir. 1973); *Cox, supra; Minnis v. UAW, et al.,* 531 F.2d 850 (8th Cir. 1975); *Butler v. Local Union 823, etc.,* 514 F.2d 442 (8th Cir. 1975); and *De Arroyo, et al. v. Sindicato De Trabajadores Packinghouse, AFL-CIO, et al.,* 425 F.2d 281 (1st Cir. 1970), *cert. denied,* 400 U.S. 877 (1970).

The Sixth Circuit Court of Appeals also analogized the duty of fair representation claims to common law tort claims. *Pitts v. Frito-Lay, Inc.*, 700 F.2d 330, 334 (6th Cir. 1983); *Smart v. Ellis Trucking Company, Inc.*, 580 F.2d 215 (6th Cir. 1978). Because plaintiffs' cause of action is essentially one in tort, any legal relief that the plaintiffs are entitled to thereunder entitles plaintiffs to a trial by jury.

The District Court further found that suits brought against a union for breach of the duty of fair representation is one that is traditionally applied from the NLRA, 29 U.S.C. §159(a), of which Congress has not specified what remedies are available resulting in a judicially created implemented remedial scheme for a judicially implied cause of action. *Chrysler Workers Assoc.*, No. 84-7273, unpublished op. at 8 (Appendix, p. A35).

The District Court acknowledged that plaintiffs seek lost wages, lost benefits, lost seniority rights, declaratory and injunctive relief, damages for severe mental and emotional stress, punitive damages, and such other and further relief that the trial court deemed just and equitable. The District Court also acknowledges that the plaintiffs' claim is a request for remedial relief: the right to return with full seniority to "home" plants. The District Court found that plaintiffs' claims for money damages were merely incidental to the equitable remedial relief sought. *Chrysler Workers Assoc.*, No. 84-7273, unpublished op. at 11 (Appendix, p. A39).

The District Court's finding that the relief sought by plaintiffs is basically equitable ignores that fact that plaintiffs are seeking money damages for severe mental and emotional distress, and for travel expenses because of the long distances between plaintiffs' home plants and the Lima Tank Plant. The District Court appears to be minimizing the monetary relief sought by the plaintiffs.

However, it is not the amount of the legal relief sought compared to the equitable relief that determines the plaintiffs' right to jury, nor is it determinative whether or not the legal or equitable relief is intertwined.

The final prong of the *Ross* test takes into consideration practical abilities and limitations of the juries. District Court decisions which have addressed this issue are in accord. *Rowan v. Howard Sober, Inc.*, 384 F. Supp. 1121, 1125 (E.D.Mich. 1974); *Kinzel v. Allied Supermarkets, Inc.*, 88 F.R.D. 360, 364 (E.D.Mich. 1980); *Oil, Chemical and Atomic Workers International Union, Local 4-23 v. Texaco, Inc.*, 88 F.R.D. 86, 89 (D.C. Tx., 1980).

Every Circuit Court of Appeal that has considered this issue has found that plaintiffs are entitled to a jury trial. *De Arroyo, supra; Sanderson, supra;* and *Butler, supra.* Plaintiffs urge this Court to grant this Petition so as to address such a fundamental issue, and to protect those rights as guaranteed by the Seventh Amendment of the U.S. Constitution.

CONCLUSION

For all of the above reasons, the Petition for the Writ of Certiorari should be granted.

Respectfully submitted,

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87-1682

No. _____

IN THE

Supreme Court of the United States

October Term, 1987

CHRYSLER WORKERS ASSOCIATION, *et al.*,
Petitioners,

vs.

CHRYSLER CORPORATION; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW LOCALS #371, #1331, #1435, #2035 and #2147,
Respondents.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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Decision of the United States Court of Appeals For the Sixth Circuit

(Filed November 25, 1987)

No. 86-3361

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CHRYSLER WORKERS ASSOCIATION, *et al.*,
Plaintiffs-Appellants,

v.

CHRYSLER CORPORATION; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW LOCALS #371, #1331, #1435, #2075 & #2147,
Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Ohio.

Before: MARTIN, WELLFORD and NELSON, *Circuit Judges.*

WELLFORD, *Circuit Judge.* The individual plaintiffs are now employees at the General Dynamics Land Systems, Inc. (GDLS), Lima, Ohio, tank manufacturing plant. Formerly, they worked for Chrysler Defense, Inc. (a wholly owned subsidiary of Chrysler formed to manufacture defense products rather than automobiles).

This is an appeal from the district court's order granting summary judgment to the defendants, Chrysler, the United Automobile, Aerospace, and Agricultural Implement Workers of America International Union (UAW), several UAW locals, and GDLS. The suit stems from the plaintiffs' attempts to return to their "home" plants, in which they were employed before transferring to the Lima, Ohio, tank plant pursuant to a work opportunity provision in their collective bargaining agreement (CBA) with Chrysler. The plaintiffs claim that UAW violated its duty of fairly representing them and pursuing their grievances. They claim Chrysler breached the CBA by not transferring them back to their "home" plants. (Plaintiff Chrysler Workers Association is simply an organization formed by individual plaintiffs to advance their interests.)

We consider first whether the district court erred by holding that the defendants are entitled to summary judgment because the plaintiffs' causes of action were barred by the applicable six month statute of limitations.

During an economic recession Chrysler indefinitely laid off thousands of workers at Chrysler plants, including, in 1981 and 1982, these plaintiffs who worked in Perrysburg, Ohio, Van Wert, Ohio, and New Castle, Indiana (hereafter referred to as "home" plants). Chrysler Defense, Inc., on the other hand, was then expanding, so, under the provisions of a CBA between Chrysler and the UAW and all its locals, the plaintiffs took advantage of an opportunity to transfer to the Lima, Ohio tank manufacturing plant operated by Chrysler Defense, Inc. This work opportunity provision of the CBA (#65) afforded the transferring employees an opportunity to return to their home plants under certain

conditions.[1] The plaintiffs could also return to their home plants in two other ways: (1) under the provisions of the "Ohio Letter," a subsequent agreement modifying the CBA, which provided that plaintiffs could opt to return if their home plants hired new employees and if the return did not adversely affect either plant's operations, or (2) under the provisions of the so-called "Sadie Hawkins Day" term, a special provision whereby, once each year on a selected date, work opportunity employees, such as plaintiffs, who are not indefinitely laid off from the work opportunity plant, were afforded an opportunity to sign up to return to their home plant (but only in a situation where the home plant would have otherwise hired a new employee, and provided such transfer would "not affect adversely the efficiency of the operations at the plant or plants involved").

Since none of the plaintiffs were indefinitely laid off from the GDLS tank plant, their conditional opportunity to return to their home plants was limited to the Ohio Letter or the "Sadie Hawkins Day" terms. Plaintiffs attempted to exercise a transfer option under these two

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1. (65) WORK OPPORTUNITY FOR LAID OFF EMPLOYEES (in pertinent part)

> The plant agrees that in employing new people in any department it will give *work opportunity to qualified laid off employees* in the following order:
>
> . . . .
>
> Employees accepting work under this Subsection (b) *shall have no right to return to former plants unless and until they are permanently laid off from the new plant.* When so laid off they shall elect to (i) retain seniority at the new plant and in such case their seniority at their former plants shall terminate or (ii) return to their former plant with full accumulated seniority and in such case their seniority at all other plants shall terminate. (Emphasis added).

provisions, but Chrysler did not permit transfer.[2] The plaintiffs want this return for two reasons: to retain their old Chrysler seniority, and because these plants are closer to their homes than the Lima tank plant.

In early 1982, Chrysler planned to sell its defense industry operations. The UAW learned that General Dynamics Corporation (GD) would buy Chrysler Defense, Inc., so it began negotiations with GD. The parties essentially agreed, by March of 1982, that GD would abide by the 1979 Chrysler-UAW CBA terms until the existing CBA termination date of September 14, 1982. Chrysler Defense, Inc., after being sold to GD, was renamed GDLS. Plaintiffs became employees of GDLS, not Chrysler, since Chrysler no longer had any connection with the Lima tank plant. The statute of limitations dispute revolves about the question whether and when plaintiffs were notified, or put on notice, that the sale affected their recall rights to Chrysler. Apparently, however, both corporate and Union officials had some question about the plaintiffs' status at the time; as a consequence, two "letters of understanding" or "letter agreements" were issued.

2. The Ohio letter of understanding pertained to Chrysler workers laid off at the Perrysburg, Ohio facility. Since plaintiffs were subject to this supplemental agreement, others, who worked at the Van Wert, Ohio plant, and the New Castle, Indiana plant are not seeking transfer back to these plants under the Ohio agreement, which is described in plaintiffs' brief at pp. 3-5 as having "modified Article 65 of the 1979 agreement (for those employees transferred to plants more than 50 miles from their home plant) . . . and operated only with respect to transfers from home plants to other plants within fifty miles." Van Wert employees attempted to return to their home plants under the Sadie Hawkins Day agreement. It is uncertain on what basis New Castle employees sought transfer. Plaintiffs in their brief assert at pages 5 and 24 that New Castle employees did not transfer to the Lima tank plant under the work opportunity provision, §65 of the 1979 CBA; rather, they "hired in off the street as new employees."

The first letter agreement from GD to the UAW was dated May 18, 1982. Marc Stepp, Vice President of the UAW, "accepted" this letter.[3] The second letter to the UAW, dated June 7, 1982, was from Chrysler Corporation, and the same UAW official "accepted" this letter. The latter states Chrysler's understanding of the plaintiffs' rights to return to their home Chrysler plants, and the UAW's agreement thereto:

> 1. An employee of CDI (now GDLS) who would otherwise qualify for the right to return to a Chrysler Corporation plant based on Section 54(c) or Section 65(b) of the applicable Chrysler-UAW agreements, may exercise the opportunity to return to his former plant *if indefinitely laid off by GDLS according to the provisions of said agreements, on or before September 14, 1982.* Unless indefinitely laid off by that date, any such employee shall lose any right to return to Chrysler. (Emphasis added).

Twice in July of 1982 the UAW held a meeting to explain to Union members the effect of the Chrysler sale to GD. The plaintiffs allege that "no mention was made of" the May and June 1982 letters of understanding and that "no one informed the Plaintiffs that their seniority rights at their home plants or their ability to return to their home plants had been in any way altered as a result of the sale."[4] Local Union president, Darrell Cole,

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3. This letter dealt with former GDLS employees returning to the Lima plant and is not at issue.

4. In their reply brief at p. 2, it is set out that "[t]he Plaintiffs do not dispute that the letter agreements, secretly entered into by UAW, Chrysler and General Dynamics, appear to extinguish the Plaintiffs' seniority rights on September 14, 1982." These letter agreements specifically refer to extinguishment of *transfer privileges* to home plants by September 14, 1982.

testified that he did not recall telling the Union members about the letter agreements or that their recall rights would terminate on September 14, 1982, nor did he recall any other Union representative explaining this to the Union workers. Stepp testified that he "doubted very much" that the June 7, 1982, letter agreement "was reproduced and sent to the members", and that, as far as he knew, the letter agreements were never furnished to the plaintiffs.[5] Homer Jolly, a UAW Chrysler Department official, testified that he did not know if the letter agreements were ever given to the plaintiffs or posted for them to see. Jolly did testify that he discussed their recall rights with the plaintiffs, but this, again, is a source of controversy.

In September of 1982, the UAW again held a meeting, this time to inform the membership of the terms and conditions of a proposed new CBA between the UAW and GDLS. The plaintiffs assert that they were not then told about the effect on their opportunity to return to their Chrysler home plants. Jolly stated that no Chrysler worker ever asked about returning or was told that he could return to his home plant. Plaintiffs' affidavits do not dispute this testimony. They simply assert that plaintiffs did not know that Chrysler and the Union considered their opportunity to return to "home" plants then to be at an end.

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5. Stepp also testified about two undated letters drafted at his direction, one to Chrysler workers contemplating a return to the Lima GDLS plant and one to GDLS workers contemplating a return to Chrysler plants. While the letters, drafted after the May and June 1982, letter agreements, did not mention the letter agreements or the terms thereof, they purported to explain the benefits and/or drawbacks of transferring back to the former plants. There is also a dispute about whether plaintiffs saw, or received, these undated letters.

The UAW and GDLS bargained for a new CBA after September 14, 1982, and within two weeks UAW and GDLS agreed to a new CBA, to expire September 14, 1985. The new CBA had no provisions relating to Chrysler or former Chrysler employees, and the membership, including the plaintiffs, ratified the new CBA.

Whether the 1979 CBA expired on September 14, 1982, is contested. The termination provision, section (119), states that the 1979 CBA remains in effect until September 14, 1982, but may renew from year to year thereafter unless either party gives notice to "modify, amend or terminate" the agreement sixty days before the termination date. There is no evidence that either party gave the notice. The parties agreed to "change" section (119) of the 1979 CBA on September 5, 1983 (one year later). Some witnesses "assumed" termination or amendment of the 1979 CBA had occurred. The question of the September 14, 1982, termination is involved in the statute of limitations issue.

On the other hand, that the 1979 CBA terms expired on September 14, 1982, as between the UAW and GDLS, cannot seriously be questioned. On March 11, 1982, GDLS agreed to follow the terms of the 1979 CBA between Chrysler and the UAW only until September 14, 1982. Clearly, after September 14, 1982, GDLS was not bound by the 1979 CBA. After a short strike and subsequent negotiations, a UAW-GDLS CBA effective September 27, 1982, was executed.

There is no dispute but that Chrysler and the UAW twice amended the 1979 CBA, once on December 10, 1982, and again on September 5, 1983. By September 14, 1982, none of the plaintiffs had been indefinitely laid off by GDLS. The district court determined that:

> Sometime subsequent to the aforesaid sale of Chrysler Defense, Inc. to General Dynamics, Chrysler, due to improved economic factors, began to expand its work force at certain of its plants, after which time plaintiffs' sought to return from GDLS's Lima tank plant to their "home" Chrysler plants. Such attempts of plaintiffs were unsuccessful. In 1983 and 1984, several GDLS employees filed or sought to file grievances with respect to a perceived refusal to allow said employees to return to their "home" Chrysler plants. The Union did not process those grievances that were actually filed, nor would it file any grievance with respect to the "home" plant transfer issue. No GDLS employee at the Lima tank plant was indefinitely laid off between March, 1982 and September 14, 1982. As of March 23, 1984, the date this lawsuit was commenced, plaintiffs had not been separated from GDLS; rather, they continue to be employed by GDLS at the Lima, Ohio tank plant.

On November 11, 1983, the UAW sent letters to the plaintiffs unequivocally denying their grievances about not permitting home plant transfers. The plaintiffs, unable to get the UAW to process their grievances about their right to return to their home plants, formed the Chrysler Workers Association and filed suit on March 23, 1984. On April 27, 1986, after discovery and numerous motions, the district court granted summary judgment to all defendants on the basis of the statute of limitations:

> Applying the standards for accrual to the undisputed facts of this case establishes that plaintiffs [sic] hybrid §301/fair representation claim accrued no later than December 10, 1982, the date of

the 1982 national and local agreement between the Union and Chrysler. Said 1982 agreement did not renew the May 18, 1982 and June 7, 1982 letters of understanding, nor did it apply to plaintiffs UAW Local Union 2075, nor did it provide for either inter-corporation or cross-national bargaining unit work opportunity transfers. By July, 1982 plaintiffs knew or reasonably should have know [sic] that their subject Chrysler "home plant recall/seniority rights["] would terminate September 14, 1982. By September 14, 1982, plaintiffs knew or reasonably should have known that the October 25, 1979 agreement between Chrysler and the UAW expired by its express terms. Further, by September 14, 1982, plaintiffs knew or reasonably should have known that the express prerequisite for returning to their "home" Chrysler plants with seniority had not occurred, to wit, being indefinitely laid off by GDLS before September 14, 1982. By September 27, 1982, plaintiffs knew or reasonably should have known that the 1982 collective bargaining agreement between the UAW and GDLS covered plaintiffs' UAW Local Union 2075, said 1982 agreement did not renew or extend the May 18, 1982 or the June 7, 1982 letters of understanding, and that said 1982 agreement did not provide for inter-corporation or cross-national bargaining unit work opportunity transfers.

By December, 1982 subsequent to ratification of the December 10, 1982 agreement between the UAW and Chrysler, plaintiffs knew or reasonably should have known that the Lima, Ohio tank plant UAW Local Union 2075 was not covered by said agreement, that the aforesaid letters of understanding were not renewed by said 1982

> agreement, and that said 1982 agreement did not provide for inter-corporation or cross-national bargaining unit work opportunity transfer. In sum, the Court finds that plaintiffs' hybrid §301 fair representation claim accrued no later than December 10, 1982 by which time plaintiffs discovered or in the exercise of reasonable diligence should have discovered the acts constituting either the alleged violation of the abrogation of their Chrysler "home" plant recall/seniority rights or the fact of defendants' agreement that plaintiffs' said "home" plant recall/seniority rights would terminate on September 14, 1982, Plaintiffs discovered or in the exercise of reasonable diligence should have discovered that their Chrysler "home" plant recall/seniority rights were impaired or, as alleged, abrogated by the actions of defendants (the gravamen of their complaint), as early as July, 1982, and no later than the dates of ultimate ratification of the respective 1982 agreements between the UAW and GDLS and between the UAW and Chrysler. Finally, plaintiffs [sic] cause of action for the Union's violation of §101 of the LMDRA, 29 U.S.C. §411, for failure to permit plaintiffs to ratify both the aforesaid letters of understanding and the March 16, 1982 agreement between GDLS and the UAW accrued no later than July, 1982.

The court also found that the statute of limitations had not been tolled.

The district court dismissed GDLS,[6] granted summary judgment on the statute of limitations defense to both Chrysler and the UAW, and struck plaintiffs' jury demand. In a previous order, dated September 25,

6. No objection was made as to dismissing GDLS. GD has also been dismissed as a party defendant.

1985, the district court denied plaintiffs' request for leave to file another amended complaint and refused to compel further discovery. (Plaintiffs sought three interrogatory answers from Chrysler and a more complete answer to another of its interrogatories.)

The plaintiffs' claims[7] arise essentially under §301 of the Labor Management Relations Act (LMRA) of 1947, 29 U.S.C. §185,[8] and from §9(a) of the National Labor Relations Act (NLRA), 29 U.S.C. §159(a).[9] There is a

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7. The plaintiffs' amended complaint alleges breach of the CBA by the employer, breach of the union's duty of fair representation, violation of the union's constitution and bylaws, and misrepresentation. They seek monetary damages, a declaration of their rights, injunctive relief, and punitive damages.

8. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

LMRA §301, 29 U.S.C.A. §185(a)(1978).

9. (a) Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

NLRA §9(a), 29 U.S.C.A. §159(a)(1973).

judicially implied duty of fair representation under these statutes. *See, e.g., International Brotherhood of Elec. Workers v. Foust,* 442 U.S. 42, 46 n.8 (1979).

This type of suit against an employer and union is known as a hybrid §301/unfair representation action. *E.g., DelCostello v. International Brotherhood of Teamsters,* 462 U.S. 151, 165 (1983); *Vaca v. Sipes,* 386 U.S. 171 (1967). A six month limitations period, as established in §10(b) of the NLRA, applies to suits of this type. *DelCostello,* 462 U.S. at 172. Since this action was pending when *DelCostello* was decided on June 8, 1983, the six month statute governs these claims. *Smith v. General Motors Corp.,* 747 F.2d 372, 375 (6th Cir. 1984) (en banc); *McCreedy v. Local Union #971,* 809 F.2d 1232, 1236 (6th Cir. 1987). The plaintiffs' causes of action are accordingly time barred if they accrued prior to September 23, 1983. Hybrid §301/fair representation claims accrue when employees discover, or should have discovered with the exercise of reasonable diligence, the acts constituting the alleged violations. *See Shapiro v. Cook United, Inc.,* 762 F.2d 49, 51 (6th Cir. 1985) (per curiam) (stating the "cause of action accrue[d] by operation of the collective bargaining agreement") and *Former Frigidaire Employees Association v. International Union of Elec., Radio & Machine Workers, Local 801,* 573 F. Supp. 59, 61-62 (S.D. Ohio 1983), *aff'd sub nom., Adkins v. International Union of Elec., Radio & Machine Workers,* 769 F.2d 330 (6th Cir. 1985). The question in this case involves an application of this rule to the facts of this dispute and whether the district court could have decided that the plaintiffs knew or should have known of the facts giving rise to their claims before September 23, 1983. *DelCostello,* 462 U.S. at 171-72.

> Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, ... The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor. *Adickes* [*v. S. H. Kress & Co.*], 398 U.S. [144], at 158-59 [1970] . . . .

Anderson v. Liberty Lobby, Inc., _____ U.S. _____, 106 S. Ct. 2505, 2513 (1986). At the same time, only disputes over material facts that might affect the outcome of the suit under the governing law will preclude the entry of summary judgment. "Summary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* at 2510.

The plaintiffs argue that their recall rights did not expire upon the September 14, 1982, purported termination of the 1979 CBA. Since they claim that the 1979 CBA remained in effect, they assert also that they remained laid-off employees of Chrysler, temporarily working for another company, and that their recall rights did not terminate. Plaintiffs further argue that the district court ignored their affidavits stating that they did not know their recall rights were extinguished until the union refused to process their grievances beginning in late 1983.

The date of accrual or implied knowledge of plaintiffs is a material issue. In determining whether there is a genuine dispute of fact precluding proper entry of summary judgment for defendants, we look at facts that point to six possible times at which the plaintiffs knew or should have known of the accrual of their claims: (1) in May and June of 1982 when their bargaining representative, the UAW, received the GDLS and

Chrysler letter agreements; (2) in July and September of 1982 during the course of three local UAW membership meetings; (3) on September 14, 1982, when the UAW-Chrysler 1979 CBA purportedly terminated; (4) on September 27, 1982, when the UAW-GDLS CBA became effective; (5) on December 10, 1982, or September 5, 1983, when the UAW-Chrysler 1979 CBA was amended; or (6) on November 11, 1983, when the plaintiffs received the UAW's letters telling them about the letter agreements and refusing to process their grievances. Only if there is a sufficient and a reasonable basis to support a jury verdict that the last of these dates is the accrual date, should we set aside the judgment of the district court, because the asserted actual knowledge of plaintiffs is not determinative if they did not act as reasonable persons and, in effect, closed their eyes to evident and objective facts concerning accrual of their right to sue.

The district court mentioned that the plaintiffs' causes of action may have accrued when the May and June 1982 letter agreements were written and delivered to the Union. There is no firm undisputed evidence that these plaintiffs, who are now suing the UAW for the UAW's alleged unfair representation of them, were ever specifically told by the UAW about these letters until November of 1983, when the UAW refused to process grievances on the issue. The plaintiffs have sworn that they did not actually know about the letter agreements. Union witnesses do not specifically contradict this, but Chrysler had every reason to believe its position was made known, and that, in the absence of a prompt complaint or grievance, its position was unchallenged by Union officials or by Union members. Chrysler had, in short, a firm agreement terminating transfer privileges by September 14, 1982.

The court also found it undisputed that: "In July of 1982, the Union had two meetings . . . at which, *inter alia*, the May 18, 1982 and June 7, 1982 letters of understanding were read to said membership." The court also indicated that plaintiffs were told of the termination of their recall rights at the September, 1982, ratification meeting. Neither conclusion is undisputed on this record. It is questioned by plaintiffs that the May and June 1982 letters were ever discussed with the plaintiffs during the 1982 meetings. It is disputed whether plaintiffs actually knew at the July or September 1982 UAW meetings that their recall rights were affected by the sale of the Lima plant to GD, and that their Union had agreed that the opportunity to transfer back to a home plant terminated September 14, 1982.

The district court also concluded that "[b]y September 14, 1982, plaintiffs knew or reasonably should have known that the October 25, 1979 agreement between Chrysler and the UAW expired by its express terms" and that their recall rights had ceased. Whether the 1979 CBA expired on September 14, 1982, is questioned by plaintiffs. The termination clause in the CBA provides for renewal of the CBA from year to year unless a specific termination procedure is utilized. It is not clear whether this procedure was followed.

The district court indicated that the plaintiffs' cause of action accrued by September 27, 1982, the date of the new UAW-GDLS CBA. Since the GDLS's local UAW membership ratified the UAW-GDLS CBA, and plaintiffs were a part of this process, it seems fair to conclude that the plaintiffs, by exercising reasonable diligence, might well have known that their recall rights back to Chrysler plants were in doubt, especially since the UAW-GDLS CBA contained no provision related to

recall to a Chrysler plant and there was no inclusion of the plaintiffs' former locals (at Chrysler plants) on the list of parties bound by this CBA with GDLS. Further, by then plaintiffs were on notice that the Chrysler Defense plant sale to GD would, or at least might, have affected their recall rights. They knew that they were no longer considered Chrysler employees at least under the new GDLS agreement. The new CBA between GDLS and UAW contained no provisions similar to the "Ohio letter" agreement or the "Sadie Hawkins Day" agreement.

As Chrysler points out, moreover, there is indication that at least some of the plaintiffs, on roughly March 8, 1983, questioned their ability to return to their home plants, as some of them asked the UAW and GDLS about being recalled to Chrysler. GDLS gave them no assurance but told them to contact the local UAW; the local UAW allegedly refused to respond to plaintiffs' inquiries. A reasonable conclusion might be drawn that the plaintiffs failed to exercise due diligence in not finding out what their rights were either before or shortly after the new September 27, 1982, UAW-GDLS CBA, especially if the plaintiffs knew by early 1983 that the Union would not respond to their requests concerning the opportunity to transfer back to Chrysler which was no longer their employer. Whether this is a sufficient basis for awarding defendants summary judgment on accrual of a cause of action, however, may be questionable.

The UAW and Chrysler renegotiated a national CBA on December 10, 1982, as amended September 5, 1983. There is no doubt but that on December 10, 1982, and September 5, 1983, the plaintiffs were employed by GDLS, not Chrysler, and they worked at the GDLS

plant. Even if defendants had any continuing duty to plaintiffs (as alleged Chrysler employees in a lay-off status), plaintiffs must be deemed to have notice of these agreements and their implementation.

Plaintiffs argue that the 1982 letter agreements were not intended to alter the 1979 CBA. They did, however, clearly terminate any transfer right from the Lima GDLS plant to a Chrysler home plant by September 14, 1982. The latter agreements were signed by responsible officials of Chrysler, GD, and the UAW and referred specifically to the changed circumstance of the sale of Chrysler Defense, Inc., later known as GDLS, to GD and establishment of "separate bargaining units and labor agreements." Plaintiffs were aware no later than September of 1982 that they were employees of GDLS and that there was a *separate UAW-GDLS labor agreement* covering their employment and that there were *separate bargaining units* governing Chrysler plants and the GDLS plant. They also knew that there was no reference in their separate GDLS CBA to a Chrysler local union or any transfer right back to Chrysler home plants.

Plaintiffs also knew that they had not, prior to September 14, 1982, been indefinitely laid off by GDLS. Under terms of the Chrysler CBA, then, and the terms of the supplemental letter agreements, there was no basis in law for a transfer back to Chrysler home plants. New Castle plaintiffs assert (at page 24 of their brief) that "they were not required to wait until the New Castle Chrysler facility recalled all its laid-off workers and began hiring off the street," citing the decision of the Public Review Board which finally rejected the Gaw grievance on August 30, 1985. New Castle plaintiffs asserted that their rights of transfer accrued when "they

were passed over for recall at their home plants." (Plaintiffs' brief at 24). Their brief, moreover, asserts that "Joe Gaw [a New Castle plaintiff] and the New Castle, Indiana Chrysler workers had been passed over for recall prior to July, 1982." *Id.* at 24. New Castle plaintiffs further assert that they "immediately filed grievances," which were rejected, *id.* at 24, and thus they claim Chrysler then violated the CBA by July of 1982 as to New Castle plaintiffs. This contention has no merit insofar as Chrysler is concerned.

The district court, citing *Vallone v. Teamsters, Local 705*, 755 F.2d 520 (7th Cir. 1984), held that the filing of the grievance by Gaw did not toll the statute of limitations. Neither Chrysler nor the UAW recognized the New Castle plaintiffs' grievance, and it was clear after September 14, 1982, that neither party defendant, claimed by plaintiffs to be responsible to them, recognized a recall right to the New Castle, Indiana Chrysler plant at any time less than six months before this suit was filed. As stated by the district court:

> A hybrid §301/fair representation claim accrues and the applicable statute of limitations begins to run when the claimant knows or reasonably should have known of the union's alleged breach of its duty of fair representation. *Dowty v. Pioneer Rural Electric Cooperation, Inc.*, 770 F.2d 52, 56 (6th Cir. 1985), *cert. denied*, 106 S. Ct. 572 (1985).

> "A claim accrues under section 10(b) [of the NLRA, 29 U.S.C. §160(b)] when the claimant discovers, or in the exercise of reasonable diligence should have discovered, the acts constituting the alleged violation." *Adkins*, 769 F.2d at 335, *citing*, *Shapiro v. Cook United*, 762 F.2d 49, 51 (6th Cir. 1985) (*per curiam*); *Howard v. Lockheed-Georgia Co.*, 742 F.2d 612, 614 (11th Cir. 1984) (*per curiam*); *Metz v. Tootsie Roll Industries*, 715 F.2d 299, 304 (7th Cir. 1983), *cert. denied*, 464 U.S. 1070 (1984).

The district court was not in error, then, in concluding that the New Castle plaintiffs are barred by the statute of limitations in their claim against Chrysler. Plaintiffs concede that if the court holds the 1979 agreement home plant transfer privileges were terminated on September 14, 1982, "then the Plaintiffs' causes of action cannot be based on a breach of a collective bargaining agreement." (Plaintiffs' brief at 32.)

Insofar as any plaintiff claims damages against Chrysler under the "Sadie Hawkins Day" agreement, it should be noted that this agreement (relied on by Van Wert plaintiffs), expressly provides that "the corporation shall not incur any liability for claimed violations or errors in the administration of this [Sadie Hawkins] Memorandum of Understanding." Whether or not the statute of limitations constitutes a bar to a claim under this agreement, the above language eliminating liability against Chrysler would preclude a claim thereunder; moreover, the language further specifies that the Sadie Hawkins understanding "shall not take precedence over the terms and provisions of other understandings and agreements."

As to defendant Chrysler, we are not prepared to affirm the district court's conclusion that the six months statute of limitation barred plaintiffs' claims in all respects. We find another basis, however, for affirming the judgment for defendant Chrysler—the plaintiffs' concession that there is no cause of action:

> The Plaintiffs would only reiterate that if in fact this Court finds that the Plaintiffs' recall/seniority rights were eliminated in 1982 either because of the secret May and June, 1982 letter agreements or as a matter of law because of the alleged expiration of the 1979 Agreement, the Plaintiffs have no cause of action whatsoever against Chrysler Corporation for breach of contract.

Plaintiffs' Reply Brief at 11.

We conclude, under all the circumstances, that the district court reached a correct result in rendering a judgment for Chrysler. We base this conclusion upon the terms of the 1979 CBA and the letter agreement of June 7, 1982, and the undisputed fact that none of the plaintiffs had been laid off by GDLS on or before September 14, 1982.[10] Whether or not plaintiffs knew by September 14, 1982, of the terms of the preceding June letter agreement, it was a valid, reasonable and binding agreement entered into by Chrysler and the plaintiffs' collective bargaining representative limiting "interplant transfers" and precluding "inter-company transfers." In the context of the economic conditions then faced by Chrysler and the sale of its defense unit to a new and unrelated employer in early 1982, we find the arrangement worked out by UAW with Chrysler and

10. The June 7, 1982 letter agreement sets out specifically that "unless indefinitely laid off by that date, any such employee shall lose any right to return to Chrysler."

with GD, the purchaser of the Lima plant, as a matter of law to constitute neither a conspiracy nor a fraud operating against the interests of former Chrysler employees. Shortly after the letter agreement the Union put plaintiffs and other "work opportunity employees" who had transferred to the Lima plant on notice of a meeting to be attended by international Union representatives in July of 1982 to "explain the agreement and to answer questions." Plaintiffs undeniably had the opportunity to ask the Union about their status as GDLS employees. There was no "affirmative" act of concealment.

The Union, which is the collective bargaining representative of plaintiffs, is not required as a matter of law to submit the type of letter agreement here involved to the membership for ratification. *Cleveland Orchestra Committee v. Cleveland Federation of Musicians, Local #4*, 303 F.2d 229 (6th Cir. 1962). *See Oddie v. Ross Gear & Tool Co.*, 305 F.2d 143, 149 (6th Cir.), *cert. denied*, 371 U.S. 941 (1962); *Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953). Unions under the NLRA have broad authority to engage in binding collective bargaining with respect to "pay, . . . hours of employment, or other conditions of employment." 29 U.S.C. §§157, 159. Whether the Union constitution or by-laws may require this submission of an agreement to its members for approval is another matter. In any event, we find that Chrysler had a right to rely upon its agreement with the Union absent clear notice that the Union was acting in bad faith against the interests of its members. There is no such indication here.

Our decision to affirm judgment for Chrysler is not based upon the district court's statute of limitations determination. We believe there could be a factual

question as to when the plaintiffs were on notice of accrual of their rights to bring an action both for failure to represent and with respect to Chrysler's alleged violation. We have simply determined that the record established that Chrysler did not violate its contractual responsibilities with respect to plaintiffs' claimed transfer rights, and that neither Chrysler nor the UAW have fraudulently concealed from plaintiffs their asserted causes of action.

We have considered each of the dates when the district court found that plaintiffs' right to sue accrued or may have accrued. Giving plaintiffs' averments and contentions every fair and reasonable construction, we cannot say that there may not have been a genuine dispute concerning material facts as it relates to the accrual date. That plaintiffs did not act as diligently or expeditiously as they might to protect their claimed transfer rights or interests does not warrant a summary judgment for defendants on the basis of the applicable six months statute of limitations. For the reasons stated by the district court, however, we believe it was correct in any event in denying plaintiffs' claim of punitive damages against the defendant unions.

Since the plaintiffs have not prevailed against defendant Chrysler for the reasons heretofore set out, they must be deemed to have failed in this claim for damages against the union. Although we do not find that such a decision is mandated as a matter of law under the statute of limitations defense asserted by defendant unions, we affirm the judgment in their favor because of the peculiar nature of the §301 claim. Such a claim against the unions is "inextricably interdependent" upon plaintiffs' claim against defendant Chrysler. *DelCostello v. Teamsters Union*, 462 U.S. 151, 164, 165 (1983).

> 'To prevail against either the company or the Union, . . . [employee-plaintiffs] must not only show that their discharge was contrary to the contract but must also carry the burden of demonstrating breach of duty by the Union.' " *Mitchell, supra*, at 66-67 (Stewart, J., concurring in judgment), quoting *Hines, supra*, at 570-71. The employee may, if he chooses, sue one defendant and not the other; but the case he must prove is the same whether he sues one, the other, or both. The suit is thus not a straight forward breach-of-contract suit under §301, as was *Hoosier*, but a hybrid §301/fair representation claim, amounting to "a direct challenge to 'the private settlement of disputes under [the collective-bargaining agreement].' " *Mitchell, supra*, at 66 (Stewart, J., concurring in judgment), quoting *Hoosier*, 383 U.S., at 702.

DelCostello at 165.[11] *See also Vaca v. Sipes*, 386 U.S. 171 (1967); *Smith v. Kerrville Bus Co.*, 748 F.2d 1049, 1053 (5th Cir. 1984); *Findley v. Jones Motor Freight*, 639 F.2d 953, 957, 958 (3rd Cir. 1981).

Accordingly, we AFFIRM the judgment for all defendants.

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11. See also the cases cited in *DelCostello: United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56 (1981); *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976); *Auto Workers v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966).

Opinion and Order of the District Court

(Filed April 16, 1986)

Case No. C 84-7273

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

CHRYSLER WORKERS ASSOCIATION, *et al.*,
Plaintiffs,

vs.

CHRYSLER CORPORATION, *et al.*,
Defendants.

OPINION AND ORDER

POTTER, *J.*:

This matter is before the Court on Chrysler Corporation's (hereafter Chrysler) motion for summary judgment, plaintiffs' opposition thereto, Chrysler's reply, plaintiffs' surrebuttal, Chrysler's motion for leave to respond instanter thereto, the joint motion for summary judgment of defendants International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and UAW Local Nos. 371, 1331, 1435, 2075 and 2147 (collectively hereafter Union or UAW), plaintiffs' opposition thereto, the Union's reply, plaintiffs' several surrebuttals, the Union's response thereto, the motion for summary judgment of defendant General Dynamics Land Systems, Inc. (hereafter GDLS) the Union and plaintiffs' respective

responses thereto, the Union's motion to strike plaintiffs' jury demand, plaintiffs' opposition thereto, plaintiffs' motion for reconsideration of the Court's January 25, 1985 order, and plaintiffs' motion both for reconsideration of the Court's September 25, 1985 order and for leave to file a reply memorandum.

Plaintiff Chrysler Workers Association purportedly is a voluntary association organized for the asserted purpose of advocating certain rights of its members. The individual plaintiffs are former employees both of Chrysler Corporation and of Chrysler Defense, Inc., and they are members of defendant UAW Local Union No. 2075. In addition, plaintiffs presently are employees of GDLS at its Lima, Ohio tank plant. Defendant Chrysler Corporation is an employer in an industry affecting interstate commerce. Chrysler, *inter alia*, manufactures automobiles at its various production and assembly plant facilities including those located at Perrysburg, Ohio, Van Wert, Ohio, and New Castle, Indiana. Defendant International Union and defendant local unions are labor organizations in an industry affecting interstate commerce. The UAW is the exclusive collective bargaining representative for plaintiffs. Defendant General Dynamics Land Systems, Inc. is an employer in an industry affecting interstate commerce. In addition, GDLS, formerly known as Chrysler Defense, Inc., owns and operates the subject Lima, Ohio tank plant.

On October 25, 1979, Chrysler and the UAW entered into a production and maintenance collective bargaining agreement (hereafter 1979 agreement) which contained, *inter alia*, certain provisions relating to transfer opportunities under certain circumstances for laid-off employees. At the time the 1979 agreement became effective, plaintiffs were employees of Chrysler. During

1981 and 1982, the individual plaintiffs were indefinitely laid off at various Chrysler plants due to economic factors. Notwithstanding, Chrysler Defense, Inc.'s Lima, Ohio tank plant was maintaining or expanding its production level. Chrysler and Chrysler Defense, Inc. employees had rights under the collective bargaining agreement to transfer under specified conditions between plants of the national Chrysler-UAW bargaining unit. Pursuant to a work opportunity provision of the 1979 agreement (§65) which provided that workers who were indefinitely laid off from a Chrysler plant could transfer to another Chrysler plant, plaintiffs all transferred from other Chrysler plants to the Chrysler Lima, Ohio tank plant. With respect to an employee's "home plant," an employee who transferred, pursuant to the work opportunity provision, to another plant within the bargaining unit, retained contractual seniority rights and under certain specified conditions could return to his "home" Chrysler plant.

In early 1982, Chrysler spun off all of its military product operations as a separate subsidiary known as Chrysler Defense, Inc. Also, in early 1982, the UAW became aware that Chrysler was negotiating with General Dynamics Corporation for the sale of Chrysler Defense, Inc. During March of 1982, the UAW and General Dynamics reached an agreement embodied in writing which, in essence, provided that General Dynamics both would recognize the UAW as the bargaining agent for employees at plants formerly operated by Chrysler Defense, Inc. and would abide by the express provisions of the 1979 agreement as to former CDI employees until its expiration on September 14, 1982.

On or about March 16, 1982, Chrysler sold its total ownership stock shares of Chrysler Defense, Inc. which operated Chrysler's defense plants including the Lima, Ohio tank plant, to General Dynamics Corporation. General Dynamics both renamed Chrysler Defense, Inc. and incorporated its new business as General Dynamics Land Systems, Inc. (GDLS). Subsequently, GDLS agreed to honor both the principal and applicable terms of the 1979 agreement between Chrysler and the UAW until its expiration.

On September 14, 1982, the collective bargaining agreements both between the UAW and Chrysler and between the UAW and GDLS expired. The UAW and GDLS negotiated a new production and maintenance collective bargaining agreement which became effective September 27, 1982 and which expired September 14, 1985 (hereafter 1982 agreement), the terms and conditions of which governed each plaintiff's employment with GDLS. National negotiations between Chrysler and the UAW culminated in collective bargaining agreements of December 10, 1982 and September 5, 1983. The 1982 agreement between the UAW and GDLS did not contain any transfer provision either continuing the provisions of the 1979 agreement regarding return to "home" plants or regarding transfer of a GDLS employee to another company.

Sometime subsequent to the aforesaid sale of Chrysler Defense, Inc. to General Dynamics, Chrysler, due to improved economic factors, began to expand its work force at certain of its plants, after which time plaintiffs sought to return from GDLS's Lima tank plant to their "home" Chrysler plants. Such attempts of plaintiffs were unsuccessful. In 1983 and 1984, several GDLS employees filed or sought to file grievances with respect

to a perceived refusal to allow said employees to return to their "home" Chrysler plants. The Union did not process those grievances that were actually filed, nor would it file any grievance with respect to the "home" plant transfer issue. No GDLS employee at the Lima tank plant was indefinitely laid off between March, 1982 and September 14, 1982. As of March 23, 1984, the date this lawsuit was commenced, plaintiffs had not been separated from GDLS; rather, they continue to be employed by GDLS at the Lima, Ohio tank plant.

On March 23, 1984, plaintiffs commenced this labor action by filing their complaint with this Court. Fed.R.Civ.P. 3. Plaintiffs' complaint, as amended, alleges breach of the applicable collective bargaining agreements, breach of the Union's duty of fair representation, violation of the Union's constitution and bylaws and misrepresentation. Specifically, by their first cause of action plaintiffs allege, albeit implicitly, that Chrysler and the Union, in violation of the existing collective bargaining agreements, entered into surreptitious agreements which extinguished plaintiffs' rights to return to their "home" Chrysler plants. Plaintiffs claim that by unilaterally abrogating plaintiffs' "home" plant transfer rights, Chrysler breached the 1979 collective bargaining agreement and the Union breached its duty to the individually named plaintiffs to fairly represent them. By their second cause of action, plaintiffs allege that the Union further breached its duty of fair representation by its arbitrary, capricious and discriminatory handling of certain grievances which plaintiffs' either filed or attempted to file. Plaintiffs claim that the manner in which the Union handled plaintiffs' grievances alleged Chrysler "to breach the collective bargaining agreement with immunity." By their third cause of action, plaintiffs allege that while

simultaneously entering into an agreement in violation of the Union's constitution and bylaws with Chrysler and GDLS to the contrary, the Union "intentionally and/or negligently misrepresented to the Plaintiffs . . . that the sale of Chrysler Defense, Inc. to General Dynamics Corp. . . . would have no adverse effect on their existing right to return to their 'home plants.'" Plaintiffs seek declaratory and injunctive relief, damages for lost wages, lost benefits, and lost seniority rights, punitive damages, and the costs of this action including reasonable attorney's fees.

Plaintiffs' lawsuit is what has come to be referred to as a hybrid §301/fair representation action, see, *e.g.*, *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151, 165 (1983), which action is brought simultaneously against both plaintiffs' employer and their Union. Plaintiffs' suit against Chrysler rests on §301 of the Labor Management Relations Act of 1947 (LMRA), 29 U.S.C. §185, for breach of the applicable collective bargaining agreement by an employer. *DelCostello*, 462 U.S. at 164. Plaintiffs' action against the Union is one both for breach of the Union's duty of fair representation and for the Union's violation of the constitution and bylaws. The duty of a union to fairly represent the members of a particular bargaining unit, which members it represents collectively, is judicially implied under Section 9(a) of the National Labor Relations Act (NLRA), 29 U.S.C. §159(a). See *Storey v. Local 327, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers*, 759 F.2d 517, 518-19 (6th Cir. 1985). Cf. *DelCostello*, 462 U.S. at 164; *International Brotherhood of Electrical Workers v. Foust*, 442 U.S. 42, 46 n.8 (1979); *Vaca v. Sipes*, 386 U.S. 171, 177 (1967); *Steele v. Louisville & Nashville Railroad Co.*, 323 U.S. 192, 202-04 (1944).

Duty of fair representation claims include, *inter alia*, allegations of unfair, dishonest, perfunctory, arbitrary, or discriminatory treatment of workers by unions and allegations of discrimination based on membership status or dissident views. *DelCostello*, 462 U.S. at 164, 170. Plaintiffs claim that the Union violated provisions of its bylaws and constitution is brought under §101 of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §411. Because plaintiffs' claims of breach of the collective bargaining agreement and of breach of the duty of fair representation "are inextricably interdependent, '[t]o prevail against either the company or the Union, . . . [employee-plaintiffs] must not only show that their [loss of right to return with seniority to their "home" Chrysler plants] was contrary to the contract but must also carry the burden of demonstrating breach of duty by the Union." *United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56, 67 (1981) (Stewart, J., concurring in judgment), *quoting*, *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 570-71 (1976). In such situations, an employee may, if he chooses, sue one defendant (the employer/company or the exclusive bargaining agent/union) and not the other; but, the case an employee-plaintiff must prove is the same whether he sues one, the other, or both. *DelCostello*, 462 U.S. at 51.

The Court's initial inquiry must be whether plaintiffs' misrepresentation claim is preempted by federal law. Whether a particular state cause of action or regulation may coexist with the comprehensive scheme of federal labor law depends on whether the conduct which a state seeks to regulate or to make the basis of liability is actually or arguably protected, prohibited, or regulated by federal labor law. See *Local 926, International Union of Operating Engineers, AFL-CIO v. Jones*, 460 U.S. 669, 675-76 (1983). If the conduct at

issue is arguably so prohibited, protected, or regulated, otherwise applicable state law and procedures are ordinarily preempted. *Id.*, at 676, *citing, San Diego Building Trades Council v. Garmon,* 359 U.S. 236, 245 (1959); *Sears, Roebuck & Co. v. Carpenters,* 436 U.S. 180, 187-90 (1978), and *Farmer v. Carpenters,* 430 U.S. 290, 296 (1977).

It is clear from the face of plaintiffs' second amended complaint that plaintiffs' hybrid §301/fair representation claim (first, second, and third causes of action) and plaintiffs' state law misrepresentation claim (third cause of action) both arise from and are based on the same set of facts. Clearly, plaintiffs' federal and state claims are intertwined. Moreover, the same alleged conduct of defendants is the basis of plaintiffs' causes of action: their claim that Chrysler breached the collective bargaining agreement, their claim that the Union breached its duty of fair representation and violated the Union constitution and bylaws, and their state law misrepresentation claim. The court finds that plaintiffs' third cause of action, to the extent that it purports to assert a state law claim for misrepresentation, is preempted by the pervasive scheme of federal labor law. *Local 926, International Union of Operating Engineers, AFL-CIO,* 460 U.S. at 676. The doctrine of federal preemption accordingly dictates that this case be decided exclusively by the applicable federal labor law. See, *e.g., Davis Co. v. United Furniture Workers,* 674 F.2d 557 (6th Cir. 1982), *cert. denied,* 459 U.S. 968 (1982) (Tennessee libel law preempted by federal labor law); *Fristoe v. Reynolds Metal Co.,* 615 F.2d 1209 (9th Cir. 1980); *Williams v. Pacific Maritime Ass'n,* 421 F.2d 1287 (9th Cir. 1970); *Avco Corp. v. Aero Lodge No. 735 IAM,* 376 F.2d 337 (6th Cir. 1967), *aff'd,* 390 U.S. 557, *reh'g denied,* 391 U.S. 929 (1968).

Plaintiffs move the Court for reconsideration of "its decision of January 25, 1985 denying Plaintiffs' Motion to Compel answers to interrogatories." Upon review of the record in this case, the Court finds that it issued no order on January 25, 1985. The court assumes that plaintiffs seek reconsideration of the Court's September 25, 1985 memorandum and order denying the August 27, 1985 motion of plaintiffs to compel, as having been filed untimely. The subject interrogatories were both served on Chrysler on May 19, 1985 and filed with the Court on May 24, 1985. Upon consideration and for the same reasons stated by the Court in its September 25, 1985 memorandum and order, the Court finds plaintiffs' motion for reconsideration to be not well taken. Accordingly, the Court will deny said motion.

Plaintiffs move both for reconsideration of the Court's September 25, 1985 memorandum and order denying plaintiffs' motion for leave to file a third amended complaint, and for leave to file a supplemental memorandum in support of the aforesaid motion for leave to file a third amended complaint. In its memorandum and order of September 25, 1985, the Court fully addressed the issues raised by plaintiffs' instant motion. Plaintiffs correctly observe that at the time the Court issued the aforesaid memorandum and order, trial of this case was scheduled for October 1, 1985. However, at a pretrial conference held September 30, 1985, the Court set this cause for trial on April 22, 1986 with a backup trial date of July 15, 1986. By its pretrial order of October 3, 1985, the Court ordered that both discovery and motion practice remain closed. This case is presently the number one case for trial commencing April 22, 1986. Upon consideration and for the same reasons stated at length by the Court in its September 25, 1985 memorandum and order, the Court

finds plaintiffs' motion and their arguments advanced in support thereof to be not well taken. Accordingly, the Court will deny said motion.

Defendant Union moves this Court to strike plaintiffs' jury demand on the grounds that plaintiffs, in essence, have no statutory right, either express or implied, to a jury trial in this hybrid §301/fair representation action and that plaintiffs have no right under the Seventh Amendment to the United States Constitution to a jury trial. Referencing the three-prong inquiry enunciated in *Ross v. Bernhard*, 397 U.S. 531 (1970), defendant Union asserts that plaintiffs' hybrid §301/fair representation action is not in the nature of a suit at common law and, therefore, no premerger of law and equity custom of entitlement to a jury trial exists and that the remedies sought by plaintiffs are, in fact, equitable in nature. The Union argues that both because a close relationship exists between fair representation and unfair labor practice actions and because Congress did not authorize jury trials for unfair labor practice actions, "had Congress considered the issue, it would not have authorized jury trials for breach of the duty of fair representation actions." The Union further argues that its duty of fair representation is rooted in well established equity principles related to fiduciary responsibility. The Union asserts, albeit implicitly, that plaintiffs' claim for punitive damages is frivolous and, therefore, should be given no weight by the Court in its determination of the right to jury trial issue. The Union maintains that, in any event, punitive damages may not be assessed in fair representation actions. Finally, the Union asserts that the current rule of the Sixth Circuit is that a jury trial is unavailable for claims under 29 U.S.C. §411.

Plaintiffs complaint contained a timely jury demand. Plaintiffs assert that they expressly claim damages for lost wages, lost benefits, lost seniority rights and for severe mental and emotional distress, and that they seek declaratory and injunctive relief. Plaintiffs contend that under the three-prong test of *Ross v. Bernhard, supra*, plaintiffs are entitled to a jury trial in accordance with the Seventh Amendment's guarantee. Plaintiffs argue that since the nature of the remedy sought is of primary importance with respect to the right to jury trial issue, a jury trial is appropriate in an action under §301 of the LMRA, 29 U.S.C. §185, when a legal remedy such as compensatory damages for severe mental and emotional distress and punitive damages is requested. Plaintiffs further argue that a right to a jury trial exists for a claim for damages under §101 of the LMRDA, 29 U.S.C. §411 whether or not equitable relief also is requested. Plaintiffs assert that punitive damages are recoverable for a claim brought under 29 U.S.C. §411 where a plaintiff has demonstrated that a union has acted with malicious intent. Plaintiffs contend that since a §301 cause of action "is merely a breach of contract claim" and since breach of the duty of fair representation has been characterized as a common law tort, both of which causes of action were recognized at common law, the Seventh Amendment preserves the right of jury trial as to the issues raised by said causes of action. Plaintiffs argue that the legal issues presented by their action are not incidental to the equitable issues so raised. Finally, plaintiffs assert that the issues raised by their §301 claim are well within the practical abilities of jurors.

Plaintiffs acknowledge that their instant claim against Chrysler is for breach of the subject collective bargaining agreement and that their claim against the Union is for breach of the Union's duty of fair

representation. Plaintiffs have also alleged that the Union violated §101 of the LMRDA, 29 U.S.C. §411 by failing "to inform Plaintiffs or to allow . . . Plaintiffs the opportunity to ratify the abrogation of their recall rights." (p. 2, plaintiffs' memorandum contra Union's motion to strike jury demand). Notwithstanding, plaintiffs state that they "have now learned that there has been no agreement abrogating their 'recall rights.' " (p. 2, plaintiffs' memorandum contra Union's motion to strike jury demand).

As the Court stated *supra*, plaintiffs' action is a hybrid §301/fair representation claim brought under §301 of the LMRA, 29 U.S.C. §185. *DelCostello*, 402 U.S. at 164-65. The right to bring an unfair representation action against a union is one which is judicially implied from the NLRA, 29 U.S.C. §159(a), *DelCostello*, 462 U.S. at 164, and Congress has not specified what remedies are available in such suits. *International Brotherhood of Electrical Workers v. Foust*, 442 U.S. 42, 47 (1979). As a result, a judicially created and implemented remedial scheme has developed for this judicially implied cause of action. *Id.*, at 47, 47 n.9.

Punitive damages are generally not recoverable in an action brought under §301 of the Labor Management Relations Act, 29 U.S.C. §185, for breach of a collective bargaining agreement by an employee. See *Murphy v. International Union of Operating Engineers, Local 18*, 774 F.2d 114, 134 (6th Cir. 1985), *citing, Farmer v. ARA Services, Inc.*, 660 F.2d 1096, 1106-07 (6th Cir. 1981); *Hechenberger v. Western Electric Co., Inc.*, 570 F. Supp. 820, 822 (E.D. Mo. 1983), *aff'd*, 742 F.2d 453 (8th Cir. 1984), *cert. denied*, 105 S. Ct. 1182 (1985), and *citing, Tippett v. Liggett & Meyers Tobacco Co.*, 316 F. Supp. 292, 298 (M.D.N.C. 1970). See also *Canton Printing*

Pressman and Assistants Union No. 241 v. Canton Repository, 577 F. Supp. 455, 459 (N.D. Ohio 1983); *Dian v. United Steelworkers of America*, 486 F. Supp. 700, 706 (E.D. Pa. 1980), *citing, Local 127, United Shoe Workers of America, AFL-CIO v. Brooks Shoe Manufacturing Co.*, 298 F.2d 277 (3d Cir. 1962) (en banc) (per curiam). To the extent that such damages are recoverable, an award for same must be based on conduct which is more than merely intentional. Conduct which justifies an award for punitive damages must be "outrageous or extraordinary." *Butler v. Local Union 823, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 514 F.2d 442, 454 (8th Cir. 1975), *cert. denied*, 423 U.S. 924 (1975). The Court finds that plaintiffs' allegation of "intentional conduct" with respect to Chrysler, does not, in the opinion of this Court, suffice to support a demand for punitive damages.

The fundamental purpose of unfair representation suits is simply to compensate an employee for injuries caused by violation of his rights. *International Brotherhood of Electrical Workers v. Foust*, 442 U.S. at 48. Because general labor policy disfavors punishment, and the adverse consequences of punitive damages awards could be substantial, punitive damages are not recoverable against a union for breach of its duty of fair representation. *Id.*, at 52. See also *Vaca v. Sipes*, 386 U.S. 171, 195 (1967); *Farmer v. ARA Services, Inc.*, 660 F.2d 1096, 1106 (6th Cir. 1981); *Rogers v. Fedco Freight Lines*, 564 F. Supp. 1169, 1174 (S.D. Ohio 1983); *Williams v. E. I. duPont de Nemours Company*, 581 F. Supp. 791, 793 (M.D. Tenn. 1983).

The Seventh Amendment to the United States Constitution, in pertinent part, provides that "[i]n suits at common law, . . . the right of trial by jury shall be

preserved. . . ." The Seventh Amendment thus preserves the right which existed under the English common law when the Amendment was adopted. *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 48 (1937); *Baltimore & Carolina Line, Inc. v. Redman*, 295 U.S. 654, 657 (1935). The Amendment has no application to cases where the recovery of money damages is merely an incident to equitable relief. *National Labor Relations Board*, 301 U.S. at 48.

The scope of the Seventh Amendment guaranty encompasses suits in which legal rights are to be determined, as contrasted with those in which equitable rights and remedies alone are determined. *Cox v. C. H. Masland & Sons, Inc.*, 607 F.2d 138, 142 (5th Cir. 1980), *citing*, *Ross v. Bernhard*, 396 U.S. 531 (1970). A key distinction between law and equity has historically been that the former deals with money damages and the latter concerns injunctive relief. However, this distinction has been blurred by court decisions indicating that not all money damages claims will be deemed "legal." *Hildebrand v. Board of Trustees of Michigan State University*, 607 F.2d 705, 708 (6th Cir. 1979) (citations omitted).

In *Ross*, the Supreme Court established three criteria for deciding when a right to a jury trial exists:

> [F]irst, the pre-merger custom with reference to such questions; second, the remedy sought; and third, the practical abilities and limitations of juries.

Ross v. Bernhard, 396 U.S. at 538 n.10.

The Sixth Circuit has decided that the primary focus to be made when determining whether a jury trial right exists is the nature of the relief sought. *Hildebrand*, 607 F.2d at 708. Under the law of this circuit, the remedy of

lost wages (back pay) constitutes equitable relief. See, e.g., *Id.; Moore v. Sun Oil Co. of Pennsylvania*, 636 F.2d 154, 156 (6th Cir. 1980); *Harris v. Richards Manufacturing Co.*, 675 F.2d 811, 815 n.2 (6th Cir. 1982). If the remedy sought is an injunction, lost wages, lost benefits, or reinstatement, that is, equitable relief, no right to a jury trial attaches. *Hildebrand*, 607 F.2d at 708. But, in the ordinary case, if the relief sought includes actual or compensatory damages and/or punitive damages, then a right does exist to trial by jury. *Id.*

The Court is of the opinion that plaintiff has no statutory right to a jury trial. Neither the express language nor the congressional intent of §301 of the Labor Management Relations Act, 29 U.S.C. §185, and of the National Labor Relations Act, 29 U.S.C. §151 *et seq.*, support a claim of right to trial by jury. Cf. *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937). Nor are plaintiffs, under the prevailing law of this circuit, entitled to a jury trial with respect to their claim under §101 of the LMRDA, 29 U.S.C. §411. *McGraw v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada*, 341 F.2d 705, 709 (6th Cir. 1965). This Court is cognizant of the fact that the *McGraw* decision has been questioned by several other circuits, see, e.g., *Quinn v. DiGiulian*, 739 F.2d 637, 645 (D.C. Cir. 1984); *Feltington v. Moving Picture Machine Operators Union Local 306 of I.A.T.S.E.*, 605 F.2d 1251, 1257-58 (2d Cir. 1979), *cert. denied*, 446 U.S. 943 (1980), and that the issue of its continued vitality or viability has, on occasion, been raised by the Sixth Circuit. See *Hildebrand*, 607 F.2d at 708 n.4; *Shimman v. Frank*, 625 F.2d 80, 101 (6th Cir. 1980). Notwithstanding, *McGraw* remains the rule of the Sixth

Circuit and, thus, is dispositive of the right to jury trial issue with respect to plaintiffs' claim under 29 U.S.C. §411.

Plaintiffs seek lost wages, lost benefits, lost seniority rights declaratory and injunctive relief, damages for severe mental and emotional distress, punitive damages, and "such other and further relief as this Court may deem just and equitable."

The Court finds that the essence of plaintiffs claim, fairly stated, is a request for remedial relief in the form of the right to return with full seniority to plaintiffs' "home" Chrysler plants. The Court has found that plaintiffs are not entitled to a jury trial as to their 29 U.S.C. §411 claim. Nor may punitive damages be recovered by plaintiffs under their hybrid §301/fair representation claim. Moreover, the Court finds that plaintiffs' claim for money damages clearly is merely an incident to the equitable remedial relief plaintiffs seek. *National Labor Relations Board*, 301 U.S. at 48; *McGraw*, 341 F.2d at 709.

Plaintiffs' action is not a suit at common law, nor is it in the nature of such a suit. Indeed, plaintiffs' hybrid §301/fair representation action is one which was unknown to the common law. It is, most accurately, in the nature of a statutory proceeding. Applying the *Ross* criteria, the Court finds that plaintiffs' action and the relief therein sought are equitable in nature. Further, the Court finds plaintiffs' argument that their prayer for "such other and further relief as this Court may deem just and equitable" constitutes a prayer for a remedy at law in the form of damages entitling plaintiffs to a jury trial, to be without merit. See, e.g., *Harris v. Richards Manufacturing Co.*, 675 F.2d 811, 815 (6th Cir. 1982). Accordingly, the Court will grant defendant Union's motion to strike plaintiffs' jury demand.

By its motion for summary judgment, defendant GDLS moves this Court to dismiss GDLS on the ground that plaintiffs fail to state a claim against GDLS upon which relief can be granted for breach of a collective bargaining agreement because GDLS had no contractual or other legal authority to prohibit its Lima, Ohio tank plant employees from transferring to Chrysler Corporation facilities and, alternatively, on the ground that even if plaintiffs could have stated a valid cause of action against GDLS for breach of a collective bargaining agreement, such cause of action is time-barred by the applicable six month statute of limitations.

In their response to defendant GDLS's motion for summary judgment, plaintiffs opine that GDLS cannot prevail on its statute of limitations defense. Notwithstanding, plaintiffs state "[d]espite extensive discovery Plaintiffs had [sic] been unable to uncover any facts which would support a claim against . . . [GDLS ;m]oreover, Plaintiffs were more than willing to dismiss . . . [GDLS] over a year ago." (Plaintiffs' response to defendant GDLS' motion for summary judgment). Accordingly, the Court elects to treat GDLS' motion *sub judice* as a motion to dismiss, pursuant to Fed.R.Civ.P. 12(b)(6), for failure to state a claim upon relief can be granted.

Defendant Union opposes dismissal of GDLS from this action on the ground that in the event "the Court deems it appropriate to revise both the Chrysler and General Dynamics labor agreements, it would be improper to leave the UAW and Chrysler with a group of workers [plaintiffs herein] whose pension and SUB benefits have been adversely affected [without] . . . the necessary trust fund adjustments between General Dynamics and Chrysler" which adjustments this Court

could mandate if GDLS remained a party to this litigation. The Court is unaware of any pending crossclaim in this action by the UAW against GDLS. The Court finds the UAW's argument to be unpersuasive and, therefore, will grant the motion of GDLS to dismiss.

Defendant Chrysler and the Union defendants move for summary judgment on the ground that there is no issue as any fact which is material to the issues *sub judice* and that they are entitled to judgment as a matter of law.

Chrysler asserts that at all times pertinent to this lawsuit, defendant UAW was the exclusive collective bargaining agent for Chrysler's employees including plaintiffs, with which agent and not individual employees, Chrysler was legally required to negotiate those matters which are the subject of this lawsuit. Chrysler further asserts that it lawfully did so negotiate such matters with the UAW. Chrysler maintains that it has fully complied with all of its agreements with the Union which are the subject of this litigation. Chrysler further maintains that since the Union has not unlawfully breached its statutory duty of fair representation as plaintiffs' exclusive collective bargaining agent, plaintiffs cannot maintain this action against either the Union or Chrysler. Chrysler contends that, in any event, plaintiffs' instant hybrid §301/fair representation action is barred by the applicable six month statute of limitations.

Plaintiffs submit that the various agreements, contracts, and letters and memoranda of understanding at issue in this lawsuit are themselves contradictory. Plaintiffs assert that they have not been separated (laid off) from GDLS' Lima, Ohio tank plant and, therefore, §49 (loss of seniority) rather than §65 (work opportunity

for laid off employees) is the provision of the 1979 agreement which is determinative of plaintiffs' seniority rights with Chrysler. Plaintiffs claim that due to the sale of Chrysler Defense Inc. to General Dynamics, §65 of the 1979 agreement is not applicable to them as they are no longer employees of other plants of Chrysler. Plaintiffs contend that after September 14, 1982, the 1979 agreement was not applicable to the Lima, Ohio tank plant. Plaintiffs assert that the 1979 agreement has not expired, only that it has been amended, and that none of the circumstances delineated in §49 of the 1979 agreement triggering loss of seniority, have, in fact, occurred. Plaintiffs contend that, accordingly, unless their seniority rights have been either negotiated away or abrogated by consent of the parties, such rights remain in effect. Plaintiffs maintain that their recall/seniority rights as to their Chrysler "home" plants, were not the subject of negotiations between the parties, nor have plaintiffs consented to the abrogation of such rights. Plaintiffs contend that their seniority/recall rights to "home" Chrysler plants have not been bargained away and, therefore, such rights exist irrespective of which collective bargaining agreement applies to plaintiffs.

Plaintiffs argue that absent explicit contractual language extinguishing their seniority/recall rights, Chrysler's failure to recall plaintiffs under either §65 or §61 of the 1979 agreement, constitutes a breach of the applicable collective bargaining agreement. Plaintiffs claim that Chrysler breached the 1979 agreement either by passing over plaintiffs for recall or by hiring new employees "off the street."

Plaintiffs deny that they were informed prior to November 11, 1983 that the Union's position was that plaintiffs' recall/seniority rights with Chrysler had been

eliminated. Plaintiffs contend that they were not informed during the ratification meeting of the September 27, 1982 agreement of the loss of their seniority/recall rights. Plaintiffs claim that it was not until November 11, 1983 that they first learned that the UAW and Chrysler had entered into an agreement terminating plaintiffs' recall and seniority rights. Plaintiffs argue their cause of action against Chrysler did not accrue until the loss of their seniority rights was announced or until they knew or reasonably should have known that they had been passed over for recall. Plaintiffs argue that whenever their cause of action accrued, the running of the statute of limitations with respect thereto was tolled because of Chrysler and the Union's concerted activity to deliberately conceal that Chrysler intended to breach the 1979 collective bargaining agreement by not recalling plaintiffs, that Chrysler actually passed over plaintiffs for recall, and the existence of the March 16, 1982 agreement between the UAW and GDLS. Plaintiffs argue that the applicable statute of limitations was tolled by the Union's fraudulent misrepresentation and concealment as to the loss of their seniority rights. Plaintiffs argue that since no proof exists as to when their cause of action accrued, the applicable statute of limitations may not be employed to bar assertion of their cause of action.

In its motion for summary judgment, defendant Union asserts that with respect to plaintiffs' Chrysler "home" plant recall/seniority rights, three agreements are relevant: the May 18, 1982 and June 7, 1982 letters of understanding and the September 27, 1982 collective bargaining agreement between the UAW and GDLS. The Union contends that during July, 1982 the aforesaid letters of understanding were explained to the affected union membership at the GDLS Lima tank plant and

that the September, 1982 collective bargaining agreement between the UAW and GDLS was submitted for ratification and simultaneously explained to all local union memberships, including the Lima tank plant local, covered by said agreement. The Union insists that the 1982 agreement between GDLS and the UAW does not contain language similar to either §65 of the 1979 agreement between Chrysler and the UAW or the aforesaid letters and memoranda of understanding, nor does it contain any other provision allowing either former CDI employees or GDLS employees return/seniority rights to "home" Chrysler plants. The Union acknowledges that it refused to file or further process grievances filed by several of the plaintiffs regarding a perceived refusal to allow them to return or be recalled to their "home" Chrysler plants, based on its determination that said grievances were meritless.

The Union claims that it is entitled to summary judgment as to plaintiffs' breach of duty of fair representation claim either because the Union's actions with respect both to the aforesaid relevant agreements and to plaintiffs' grievances were not arbitrary, discriminatory or in bad faith or because neither Chrysler nor GDLS breached its respective collective bargaining agreement with the UAW. The Union contends it is entitled to summary judgment as to plaintiffs' 29 U.S.C. §411 claim because plaintiffs have failed to state a claim under §101 of the LMDRA for which relief can be granted against the Union. The Union maintains that it is further entitled to summary judgment because plaintiffs have failed to exhaust available internal union remedies prior to commencing this action.

Defendant Union contends that, in any event, all of plaintiffs' claims are time-barred by the applicable six month statute of limitations. The Union maintains, in essence, that all of the aforesaid agreements relevant to plaintiffs' Chrysler "home" plant return/seniority rights both were consummated and became effective prior to six months preceding the date on which plaintiffs commenced this action, and, similarly, that said agreements were explained to the membership of plaintiffs' UAW local union earlier than six months preceding the date plaintiffs commenced this action. The Union further maintains that additionally, the 1979 agreement between Chrysler and the UAW expired earlier than six months preceding the commencement date of this lawsuit. Defendant Union argues that, therefore, plaintiffs discovered or through reasonable diligence should have discovered the existence of the three agreements which plaintiffs claim abrogated their "home" plant return/seniority rights and knew or reasonably should have known the content of said agreements with respect to the loss of their Chrysler "home" plant return/seniority rights earlier than six months preceding the date on which plaintiffs commenced this action. The Union further argues that, accordingly, plaintiffs' cause of action accrued, if at all, more than six months before plaintiffs filed this lawsuit. The Union contends that plaintiffs' instant action having been commenced more than six months after the accrual of their causes of action, are barred by the applicable statute of limitations.

Plaintiffs begin their opposition to defendant Union's motion for summary judgment by insisting that the Union has failed to set forth the facts material to the issues *sub judice* in a light most favorable to plaintiffs. Plaintiffs claim that the 1979 agreement, as the same

affected plaintiffs' Chrysler "home" plant recall/seniority rights, did not expire, rather, that it was only amended. Plaintiffs declare their primary argument is that the 1979 agreement, never having been altered, is in full force and effect. Plaintiffs argue that their Chrysler "home" plant recall/seniority rights have not been extinguished because of the unequivocal language of the 1979 agreement and because said rights lie with their "home" Chrysler plants which were still covered by the 1979 agreement as amended.

Plaintiffs advance that seniority is a creature of collective bargaining agreements and does not exist apart from them. Plaintiffs argue that in order to modify or extinguish seniority rights thus created, specific unequivocal language must be employed in such an agreement to effectuate modification or termination thereof. Although plaintiffs acknowledge that the 1982 agreement contains no language either providing for inter-corporation transfer of GDLS employees to Chrysler or allowing GDLS employees who were former Chrysler workers that through work opportunity became CDI employees at the Lima tank plant, to return with seniority to their "home" Chrysler plants, plaintiffs contend that none of the agreements purportedly extinguishing plaintiffs recall/seniority rights contains specific unequivocal language to that effect. Plaintiffs maintain that they never received copies of the May 18, 1982 and June 7, 1982 letters of understanding. They further maintain that notwithstanding the July, 1982 meeting with Homer Jolly, it was not until November 11, 1983 that they became aware of either the aforesaid letters of understanding or the March 16, 1982 agreement between the UAW and GDLS or of the fact that their recall rights were effectively terminated as of September 14, 1982. Plaintiffs further maintain that

neither the Union nor Chrysler informed plaintiffs at either the July, 1982 meeting relative to the letters of understanding or the September 27, 1982 ratification meeting that their recall/seniority rights terminated as of September 14, 1982. Plaintiffs claim that they were not told at the UAW Local No. 2075 September 27, 1982 ratification meeting that they could not return with seniority to their former Chrysler "home" plants.

Plaintiffs contend that the Union breached its duty of fair representation to plaintiffs by clearly acting beyond a wide range of reasonableness with respect to their Chrysler "home" plant recall/seniority rights. Plaintiffs argue that the Union breached its duty to fairly represent plaintiffs both by entering into agreements abrogating their recall/seniority rights and by misleading plaintiffs in furtherance of GDLS and Chrysler's interests in keeping their respective work forces in tact. Plaintiffs further argue that Chrysler either breached the 1979 collective bargaining agreement or, in the alternative, anticipatorily breached said agreement. Plaintiffs claim the Union breached its duty of fair representation when it failed to inform Local 2075 members of the UAW/Chrysler joint position that plaintiffs' recall/seniority rights expired as of September 14, 1982. Plaintiffs maintain that the Union's conduct with respect to the handling of plaintiffs' grievances has been perfunctory, arbitrary and in bad faith.

Plaintiffs assert that in the event the Court holds that the May 18, 1982 and June 7, 1982 agreements terminated the 1979 agreement as to plaintiffs, the UAW and its locals violated §101 of the LMRDA by depriving plaintiffs of their right to ratify collective bargaining agreements. Plaintiffs argue that their cause of action under §101 of the LMDRA accrued when they knew or

should have known of the existence of said agreements. However, plaintiffs declare their new position is that such actions by the UAW although unlawful are not now actionable because neither the May 18, 1982 and June 7, 1982 letters of understanding nor the March 16, 1982 agreement between the UAW and GDLS altered or extinguished any of plaintiffs' rights.

Plaintiffs insist that their causes of action against Chrysler and the UAW did not accrue until they knew or reasonably should have known that Chrysler breached the 1979 agreement by failing to recall plaintiffs. They further insist that Chrysler's intent not to recall them was not communicated to plaintiffs until November 11, 1983. Plaintiffs argue that since the collective bargaining agreement applicable to them remained unchanged as to recall/seniority rights, their causes of action can only accrue upon breach of the existing collective bargaining agreement. Acknowledging that their causes of action are subject to a six-month statute of limitations period, plaintiffs argue that it was not until November 11, 1983 that they learned of the May 18, 1982 and June 7, 1982 letters of understanding, of the March 16, 1982 UAW/GDLS agreement, and of Chrysler's intent not to recall plaintiffs with seniority to their "home" plants.

Plaintiffs argue that defendants have not affirmatively demonstrated that plaintiffs knew or should have known of the unilateral termination of their recall/seniority rights as a result of the 1982 collective bargaining agreement between the UAW and GDLS. Plaintiffs conclude that their causes of action against Chrysler and the UAW accrued November 11, 1983 at the earliest, and that their instant action, having been commenced March 23, 1984, is timely. Notwithstanding, in their September 24, 1985 supplemental memorandum

plaintiffs argue that because of the Public Review Board's decision as to Joe Gaw's appeal, plaintiffs' cause of action accrued only as of August 30, 1985. Plaintiffs assert that, in any event, the fraudulent concealment of material facts by both Chrysler and the UAW tolled the running of the applicable statute of limitations period. Plaintiffs contend that the UAW concealed the letters of understanding, and the March 16, 1982 UAW/GDLS agreement until November 11, 1983, and that both the UAW and Chrysler actively concealed the fact that Chrysler intended not to recall plaintiffs with seniority to their respective "home" plants. Finally, plaintiffs maintain that they either have exhausted or should be excused from exhausting all internal Union remedies.

Plaintiffs contend that neither Chrysler nor the Union is entitled to summary judgment. Further, they assert that a considerable dispute exists with respect to the Union's "involvement both prior to and after the sale of CDI to General Dynamics," the intent of the respective parties both as to what the collective bargaining agreements were to cover and as to the respective expiration dates of each, whether or not the Union or Chrysler informed plaintiffs that their Chrysler "home" plant recall/seniority rights expired September 14, 1982, whether plaintiffs' grievances are meritorious, which collective bargaining provision is applicable, when plaintiffs' causes of action accrued, and whether Chrysler or the Union fraudulently concealed material facts from plaintiffs.

Plaintiffs maintain that summary disposition of this case is inappropriate. Plaintiffs advance that the essence of their complaint against Chrysler and the Union is that under the unequivocal language of the applicable collective bargaining agreement, their recall/seniority

rights were never extinguished and they continue to exist, that Chrysler failed to honor said rights when it did not recall plaintiffs to their "home" plants, and that the Union failed to enforce said recall/seniority rights already enjoyed by plaintiffs, in breach of its duty of fair representation.

Defendants have moved, pursuant to Fed.R.Civ.P. 56(b), for summary judgment. Fed.R.Civ.P. 56(c), in pertinent part, provides that '[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(e), in pertinent part, provides that "[w]hen a motion for summary judgment is made and supported . . ., an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or . . . otherwise . . ., must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

Summary judgment is appropriate and may be granted only where there is no genuine issue with respect to the material facts of the case. *Mozert v. Hawkins County Public Schools*, 765 F.2d 75, 78 (6th Cir. 1985), *citing*, *County of Oakland v. City of Berkley*, 742 F.2d 289, 297 (6th Cir. 1984); *In re Atlas Concrete Pipe, Inc.*, 668 F.2d 905, 908 (6th Cir. 1985). A court may not properly resolve disputed questions of fact in a summary judgment decision, and if a disputed question of material fact exists, the court should deny the motion for summary judgment and proceed to trial. See *In re Atlas Concrete Pipe, Inc.*, 668 F.2d at 908. Indeed, the very

purpose of a motion for summary judgment is to eliminate a trial where it would be unnecessary and merely result in delay and expense. *Bouldis v. U.S. Suzuki Motor Corp.*, 711 F.2d 1319, 1324 (6th Cir. 1983). Although summary judgment is a useful and often efficient device for deciding appropriate cases, it must be employed only with extreme caution for it operates to deny a litigant his day in court. *Smith v. Hudson*, 600 F.2d 60, 63 (6th Cir. 1979), *cert. dismissed*, 444 U.S. 986 (1979). If the record evidence plainly reveals that no dispute as to any material fact exists, the case should be decided as a matter of law rather than be submitted to a jury. *Bouldis*, 711 F.2d at 1324, *citing, Davis-Watkins Co. v. Service Merchandise*, 686 F.2d 1190, 1197 (6th Cir. 1982), *cert. denied sub nom. Service Merchandise Co. v. Amana Refrigeration, Inc.*, 466 U.S. 931 (1984). See also *Smith v. Hudson*, 600 F.2d at 64-65.

The United States Court of Appeals for the Sixth Circuit has interpreted Fed.R.Civ.P. 56(c) to require that "the District court . . . review the entire record before deciding whether to render a decision on the merits." *Smith v. Hudson*, 600 F.2d at 64. Moreover, a party is never required to respond to a motion for summary judgment in order to prevail thereon since the burden of establishing the nonexistence of genuinely disputed material fact always rests with the movant. *Smith v. Hudson, supra, citing Adickes v. Kress & Co.*, 398 U.S. 144, 160 (1970) (other citations omitted).

In ruling on a motion for summary judgment, the Court's function is to determine with respect to any fact which is material to the issues *sub judice*, if any genuine issue exists, not resolve disputed factual issues, and to deny summary judgment if such an issue does exist. *United States v. Diebold, Inc.*, 369 U.S. 654 (1962); *Tee-*

Pak, Inc. v. St. Regis Paper Co., 491 F.2d 1193 (6th Cir. 1974). Further, "[i]n ruling on a motion for summary judgment, the court must construe the evidence in its most favorable light for the party opposing the motion and against the movant." *Bohn Aluminum & Brass Corp. v. Storm King Corp.*, 303 F.2d 425, 427 (6th Cir. 1962). If reasonable minds could differ as to a material fact in issue, then a genuine factual dispute exists and the motion for summary judgment must be denied.

Having thoroughly reviewed the entire record in this case—"the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits"—including the declarations of plaintiffs contained in their several responses to the motions for summary judgment and viewing said pleadings, depositions, affidavits, and the other materials on file in this case in a light most favorable to plaintiffs, the Court finds that there is no genuine issue as to any material fact which makes the granting of summary judgment inappropriate. The Court further finds that no genuine issue exists with respect to any fact which is material to the dispositive issue *sub judice*. The only remaining question is whether or not defendants are entitled to judgment as a matter of law. A limitation of action issue can be resolved as a matter of law if the undisputed facts establish the time when a plaintiff's cause of action accrued. *American Hotel Management Associates, Inc. v. Jones*, 768 F.2d 562, 568 (4th Cir. 1985).

The Court has thoroughly reviewed the entire record in this case including the voluminous materials submitted by the parties relating to the motions *sub judice*. Upon consideration, the Court finds defendants' statute of limitations argument to be well taken. Accordingly, the Court will grant the motions for

summary judgment of Chrysler and of the Union. Finding the statute of limitations issue to be dispositive of this case, the Court does not substantively reach the merits of the remaining issues presently *sub judice*.

Upon consideration, the Court finds that no genuine issue exists as to the following facts which are material to the statute of limitations issue. Plaintiffs are former employees of Chrysler whose conditions and terms of employment, *inter alia*, were governed by the October 25, 1979 production and maintenance collective bargaining agreement between Chrysler and the UAW, which agreement by its express terms "continue[d] in full force and effect until 11:59 P.M. September 14, 1982. . . ." Plaintiffs are members of the UAW union. Due to economic conditions, plaintiffs were laid off from their respective Chrysler plants. Pursuant to work opportunity for laid-off employees (§65 of the 1979 agreement), plaintiffs transferred to Chrysler's Lima, Ohio tank plant. Section 65(b) of the 1979 agreement provided that under certain specific conditions, plaintiffs had the right to transfer with seniority to other plants of the national Chrysler-UAW bargaining unit including their respective "home" Chrysler plants. In March of 1982, Chrysler sold its defense operations including the Lima, Ohio tank plant to General Dynamics Corporation and General Dynamics and the UAW entered into an agreement which provided, *inter alia*, that GDLS would recognize the UAW as the exclusive bargaining agent for its employees including plaintiffs and that GDLS would abide by the terms of the 1979 agreement between the UAW and Chrysler until said agreement expired on September 14, 1982. Plaintiffs' then local UAW unions while employed both by Chrysler until March 16, 1982 and by GDLS thereafter until September 14, 1982, were

parties to and covered by the October 25, 1979 Agreement. A June 7, 1982 letter of understanding from Chrysler to the UAW in part, provides:

> Interplant transfer rights are limited to plants within each corporation's [-Chrysler and General Dynamics-] bargaining units, and the parties agree that such transfers cannot include inter-company transfers from a Chrysler facility to a GDLS facility and vice versa. . . .
>
> However, . . . the parties agree as follows.
>
> 1. An employee of CDI (now GDLS) who would otherwise qualify for the right to return to a Chrysler Corporation plant based on . . . Section 65(b) of the applicable Chrysler-UAW agreements, may exercise the opportunity to return to his former plant if indefinitely laid off by GDLS . . ., on or before September 14, 1982. Unless indefinitely laid off by that date, any such employee shall lose any right to return to Chrysler.

A May 18, 1982 letter of understanding from GDLS to the UAW essentially provided the same transfer right to then current employees of Chrysler who might subsequently be interested in returning to their former plants and "who had return rights to a GDLS facility under . . . Section 65(b) of the applicable Chrysler UAW agreement" in the event said employee was permanently laid off by Chrysler on or before September 14, 1982. The May 18, 1982 letter further provided that any right to transfer to an employee's former plant "must be exercised by September 14, 1982, and unless exercised by such date such employee loses any right to return to GDLS." In July of 1982, the Union had two meetings with the UAW Local Union No. 2075 membership of which plaintiffs are members at which, *inter alia*, the May 18, 1982 and June 7, 1982 letters of understanding were read to said membership. The October 25, 1979

agreement between Chrysler and the UAW expired September 14, 1982. Plaintiffs' Local UAW Union No. 2075 for the Lima, Ohio tank plant was neither a party to nor covered by the succeeding collective bargaining agreement between Chrysler and the UAW. Section 65—work opportunity for laid off employees—was amended by said new agreement between Chrysler and the UAW.

Subsequent to September 14, 1982, the UAW and GDLS entered into a collective bargaining agreement which covered, *inter alia*, UAW Local Union No. 2075 and to which agreement said local union was a party. A ratification meeting with respect to the 1982 collective bargaining agreement between GDLS and the UAW was held on September 27, 1982. The membership of UAW Local Union 2075 ratified the 1982 collective bargaining agreement between GDLS and the UAW. Neither of the respective post-September 14, 1982 collective bargain agreements between GDLS and the UAW and between Chrysler and the UAW provided for inter-corporation work opportunity transfer rights or for cross-national bargaining unit transfer rights. Nor did either of said post-September 14, 1982 agreements expressly or implicitly renew or extend the May 18, 1982 and June 7, 1982 letters of understanding. No plaintiff while working at the Lima, Ohio tank plant was indefinitely laid off either by Chrysler before March 16, 1982 when Chrysler sold CDI to GDLS or by GDLS before September 14, 1982 when both the October 25, 1979 agreement and the aforesaid letters of understanding expressly expired.

Federal labor law reflects the well established and strong federal policy favoring relatively rapid final resolution of labor disputes. See, e.g., *DelCostello*, 462 U.S. at 168; *United Parcel Service, Inc. v. Mitchell*, 451

U.S. 56, 63 (1981); *Auto Workers v. Hoosier Cardinal Corp.*, 383 U.S. 696, 707 (1966). The Supreme Court stated in *Wood v. Carpenter*, 101 U.S. 135 (1879) that "[s]tatutes of limitations are vital to the welfare of society and are favored in the law." *Id.* at 139.

In *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983), the United States Supreme Court held, *inter alia*, that the six-month statute of limitations period imposed by §10(b) of the NLRA, 29 U.S. §160(b) applicable to unfair labor practice claims is the applicable statute of limitations period governing a hybrid §301/fair representation claim. *Id.* at 154-55. The six month statute of limitations for hybrid §301/fair representation claims announced in *DelCostello* is similarly applicable to a claim under §101 of the LMDRA, 29 U.S.C. §411. See, e.g., *Vallone v. Local Union No. 705, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 755 F.2d 520, 521-22 (7th Cir. 1984); *Adkins v. General Motors Corp.*, 573 F. Supp. 1188, 1201 (S.D. Ohio 1983), *aff'd*, 769 F.2d 330 (6th Cir. 1985). Cf. *Shapiro v. Cook United, Inc.*, 762 F.2d 49, 51 (6th Cir. 1985) (*per curiam*). The United States Court of Appeals for the sixth Circuit, joining the First, Second, Third, Fourth, Fifth, Seventh, Eighth and Eleventh Circuits, has ruled that the *DelCostello* decision establishing a six month statute of limitations for hybrid §301/fair representation claims is to be given retrospective as well as prospective effect and, therefore, *DelCostello* is applicable to all cases pending at the time it was decided. *Smith v. General Motors Corp.*, 747 F.2d 372, 374-75 (6th Cir. 1984) (*en banc*). Cf. *Shapiro v. Cook United, Inc., supra.*

The applicable six-month statute of limitations period reflects congressional indication of the proper balance between an employee's interest in vindicating his

rights and the national interest in stable bargaining relationships and in finality in labor law and industrial peace. *Adkins v. International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC*, 769 F.2d 330, 335 (6th Cir. 1985), *citing, DelCostello*, 462 U.S. at 171 (1983).

A hybrid §301/fair representation action accrues no later than the time when a plaintiff knew or reasonably should have known that a breach of the duty of fair representation had occurred, even if some possibility of nonjudicial enforcement remained. *Former Frigidaire Employees Ass'n v. International Union of Electrical, Radio and Machine Workers, Local 801*, 573 F. Supp. 59, 62 (S.D. Ohio 1983), *aff'd sub nom. Adkins v. International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC*, 769 F.2d 330 (6th Cir. 1985), and *quoting Dowty v. Pioneer Rural Electric Cooperative, Inc.*, 573 F. Supp. 155, 158 (S.D. Ohio 1983).

A hybrid §301/fair representation claim accrues and the applicable statute of limitations begins to run when the claimant knows or reasonably should have known of the union's alleged breach of its duty of fair representation. *Dowty v. Pioneer Rural Electric Cooperation, Inc.*, 770 F.2d 52, 56 (6th Cir. 1985), *cert. denied*, 106 S. Ct. 572 (1985).

"A claim accrues under section 10(b) [of the NLRA, 29 U.S.C. §160(b)] when the claimant discovers, or in the exercise of reasonable diligence should have discovered, the acts constituting the alleged violation." *Adkins*, 769 F.2d at 335, *citing, Shapiro v. Cook United*, 762 F.2d 49, 51 (6th Cir. 1985) (*per curiam*); *Howard v. Lockheed-Georgia Co.*, 742 F.2d 612, 614 (11th Cir. 1984) (*per curiam*); *Metz v. Tootsie Roll Industries*, 715 F.2d 299, 304 (7th Cir. 1983), *cert. denied*, 464 U.S. 1070 (1984).

Causes of action for breach of a collective bargaining agreement and breach of the duty of fair representation "based on entry into collective bargaining agreements accrue, and . . . [the six-month statute of limitations period] starts to run, when the contract is signed." *United Independent Flight Officers, Inc. v. United Air Lines, Inc.*, 756 F.2d 1262, 1273 (7th Cir. 1985).

Applying the standards for accrual to the undisputed facts of this case establishes that plaintiffs hybrid §301/fair representation claim accrued no later than December 10, 1982, the date of the 1982 national and local agreement between the Union and Chrysler. Said 1982 agreement did not renew the May 18, 1982 and June 7, 1982 letters of understanding, nor did it apply to plaintiffs UAW Local Union 2075, nor did it provide for either inter-corporation or cross-national bargaining unit work opportunity transfers. By July, 1982 plaintiffs knew or reasonably should have known that their subject Chrysler "home" plant recall/seniority rights would terminate September 14, 1982. By September 14, 1982, plaintiffs knew or reasonably should have known that the October 25, 1979 agreement between Chrysler and the UAW expired by its express terms. Further, by September 14, 1982, plaintiffs knew or reasonably should have known that the express prerequisite for returning to their "home" Chrysler plants with seniority had not occurred, to wit, being indefinitely laid off by GDLS before September 14, 1982. By September 27, 1982, plaintiffs knew or reasonably should have known that the 1982 collective bargaining agreement between the UAW and GDLS covered plaintiffs' UAW Local Union 2075, said 1982 agreement did not renew or extend the May 18, 1982 or the June 7, 1982 letters of understanding and that said 1982 agreement did not provide for inter-corporation or cross-national bargaining unit work opportunity transfers.

By December, 1982 subsequent to ratification of the December 10, 1982 agreement between the UAW and Chrysler, plaintiffs knew or reasonably should have known that the Lima, Ohio tank plant UAW Local Union 2075 was not covered by said agreement, that the aforesaid letters of understanding were not renewed by said 1982 agreement, and that said 1982 agreement did not provide for inter-corporation or cross-national bargaining unit work opportunity transfer. In sum, the Court finds that plaintiffs' hybrid §301 fair representation claim accrued no later than December 10, 1982 by which time plaintiffs discovered or in the exercise of reasonable diligence should have discovered the acts constituting either the alleged violation of the abrogation of their Chrysler "home" plant recall/seniority rights or the fact of defendants' agreement that plaintiffs' said "home" plant recall/seniority rights would terminate on September 14, 1982. Plaintiffs discovered or in the exercise of reasonable diligence should have discovered that their Chrysler "home" plant recall/seniority rights were impaired or, as alleged, abrogated by the actions of defendants (the gravamen of their complaint), as early as July, 1982, and no later than the dates of ultimate ratification of the respective 1982 agreements between the UAW and GDLS and between the UAW and Chrysler. Finally, plaintiffs cause of action for the Union's violation of §101 of the LMDRA, 29 U.S.C. §411, for failure to permit plaintiffs to ratify both the aforesaid letters of understanding and the March 16, 1982 agreement between GDLS and the UAW accrued no later than July, 1982.

It is well established that the equitable tolling doctrine "is read into every federal statute of limitation." *Ott v. Midland-Ross Corp.*, 600 F.2d 24, 30 (6th Cir. 1979), *quoting Holmberg v. Armbrecht*, 327 U.S. 392,

397 (1946). The traditional rule with respect to accrual of a cause of action is that a plaintiff must demonstrate fraudulent concealment of the critical facts before accrual will be postponed. *Diminnie v. United States*, 728 F.2d 301, 305 (6th Cir. 1984), *cert. denied*, 105 S. Ct. 146 (1984).

The Sixth Circuit has stated that "[i]f the defendant made a misrepresentation of material fact for the purpose of inducing a plaintiff to delay suit or release him from liability, . . . [plaintiff] is estopped to plead the statute of limitations or to interpose the release as a bar to suit, provided the plaintiff has acted in justifiable reliance upon the misrepresentation." *Ott v. Midland-Ross Corp.*, 600 F.2d 24, 31 (6th Cir. 1979).

Fraudulent concealment must consist of affirmative acts or representations which are calculated to, and in fact do, prevent the discovery of the cause of action. Mere silence of the defendant and failure by the plaintiff to learn of the right of action, alone, are not sufficient. *Curry v. A. H. Robbins*, 775 F.2d 212, 218 (7th Cir. 1985).

After plaintiffs should have discovered that they had a cause of action, there is no tolling of the applicable statute of limitations period. See generally *Dayco v. Goodyear Tire & Rubber Co.*, 523 F.2d 369 (6th Cir. 1975). Cf. *Norton-Children's Hospitals, Inc. v. James E. Smith & Sons, Inc.*, 658 F.2d 440, 444 (6th Cir. 1981). The party alleging fraudulent concealment must plead the circumstances giving rise to it with particularity. See, e.g., *Dayco Corp. v. Goodyear Tire & Rubber Co.*, 523 F.2d at 394. In order to establish fraudulent concealment tolling the running of the applicable statute of limitations period, plaintiffs must establish, "(1) wrongful concealment of their actions by the defendants;

(2) failure of the plaintiff[s] to discover the operative facts that are the basis of . . . [their] cause of action within the limitations period; and (3) plaintiff[s]' . . . due diligence until discovery of the facts." Id., at 394, *citing, Weinberger v. Retail Credit Co.*, 498 F.2d 552 (4th Cir. 1974). An injured party has a positive duty to use diligence in discovering his cause of action within the limitations period. "Any fact that should excite his suspicion is the same as actual knowledge of his entire claim." *Dayco*, 523 F.2d at 394. Indeed, "the means of knowledge are the same thing in effect as knowledge itself." *Wood v. Carpenter*, 101 U.S. 135, 143 (1879).

In order to toll the running of the statute of limitations period applicable to plaintiffs' causes of action based on the alleged fraudulent concealment of material facts by defendants, plaintiffs must establish that defendants affirmatively acted to induce delay on the part of plaintiffs in commencing their lawsuit. A plaintiff's ignorance of his cause of action does not, by itself, satisfy the requirements of due diligence, nor will it toll the statute of limitations. *Campbell v. Upjohn Co.*, 676 F.2d 1122, 1127 (6th Cir. 1982), *citing, Akron Presform Mold Co. v. McNeil Corp.*, 496 F.2d 230, 234 (6th Cir. 1974), *cert. denied*, 419 U.S. 997 (1974).

Plaintiffs' mere ignorance of language in or charges to the various agreements, by itself, did not satisfy the requirement of due diligence and was not, therefore, sufficient to toll the statute of limitations. *Shapiro v. Cook United, Inc.*, 762 F.2d 49, 51 (6th Cir. 1985) (*per curiam*). In order to prove fraudulent concealment, plaintiffs must show that they failed to discover facts that serve as the basis of their cause of action despite due diligence on their part to discover same, and that the concealment was fraudulently committed by defendants.

Shapiro, 762 F.2d at 51, *citing*, *Diminnie v. United States*, 728 F.2d 301, 305 (6th Cir. 1984). Upn consideration, the Court finds plaintiffs' assertion of fraudulent concealment and their arguments advanced in support thereof, to be without merit. The Court further finds that plaintiffs have failed to establish the alleged fraudulent concealment of defendants to toll the statute of limitations applicable to their causes of action.

It is the general rule that a statute of limitations commences to run at the time the cause of action accrues. See Annot., 32 A.L.R.4th 260, 266 (1984). Accordingly, the Court holds that plaintiffs' causes of action against defendants accrued and the applicable statute of limitations period commenced to run no later than December 10, 1982.

The undisputed facts demonstrate that plaintiffs' Chrysler "home" plant return/seniority rights which they enjoyed under the 1979 agreement, terminated September 14, 1982. It is clear that plaintiffs' mere ignorance of their rights or of the terms or the effect thereof of the various agreements pertinent to this lawsuit, is not sufficient to overcome the limitations defense. *Dayco v. Firestone Tire & Rubber Co.*, 386 F. Supp. 546, 549 (N.D. Ohio 1974), *aff'd*, 523 F.2d 389 (6th Cir. 1975), and *citing*, *Akron Presform Mold Co. v. McNeil Corp.*, 496 F.2d 230, 234 (6th Cir. 1974). See also *Ashland Oil Co. of California v. Union Oil Co. of California*, 567 F.2d 984, 988 (Temp. Emer. Ct. App. 1977), *cert. denied*, 435 U.S. 994 (1978), and *citing*, *Wood v. Carpenter*, 101 U.S. 135, 143 (1879).

Further, plaintiffs' filing of a grievance did not toll the running of the applicable statute of limitations period. See, e.g., *Vallone*, 755 F.2d at 522.

As to employees of the Lima, Ohio tank plant including plaintiffs, the October 25, 1979 collective bargaining agreement terminated September 14, 1982. Said termination was in accordance with the express terms of the 1979 agreement and the June 7, 1982 letter of understanding. The Court finds that at some point prior to six months preceding the date on which this lawsuit was commenced, plaintiffs discovered or, in the exercise of reasonable diligence, should have discovered the acts of defendants constituting the violations alleged by plaintiffs. *Metz v. Tootsie Roll Industries, Inc.*, 715 F.2d 299, 304 (7th Cir. 1983), *cert. denied*, 464 U.S. 1070 (1984). The Court finds that plaintiffs' causes of action accrued and the applicable statute of limitations period began to run when plaintiffs discovered or in the exercise of reasonable diligence should have discovered the agreements between the defendants (the May 18, 1984 and June 7, 1982 letters of understanding and the September 27, 1982 GDLS/UAW agreement) which plaintiffs claim abrogated or extinguished their Chrysler "home plant recall/seniority rights.

The Court finds that plaintiffs commenced this lawsuit on March 23, 1984. Having determined that plaintiffs causes of action accrued no later than December 10, 1982, that is, more than six months before this action was commenced, the Court concludes that plaintiffs' action having been filed more than six months after the accrual of their causes of action, is untimely and, accordingly, time-barred by the applicable six month statute of limitations. *DelCostello v. International Brotherhood of Teamsters, supra.*

THEREFORE, for the foregoing reasons, good cause appearing, it is

ORDERED that the motion of defendant Union to strike plaintiffs' jury demand be, and it hereby is, GRANTED; and it is

FURTHER ORDERED that plaintiffs' motion for reconsideration be, and it hereby is, DENIED; and it is

FURTHER ORDERED that plaintiffs' motion both for reconsideration and for leave to file a reply be, and it hereby is, DENIED; and it is

FURTHER ORDERED that defendant Chrysler's motion for leave to respond to plaintiffs' supplemental response be, and it hereby is, DENIED; and it is

FURTHER ORDERED that the motion of defendant General Dynamics Land Systems, Inc. to dismiss be, and it hereby is, GRANTED; and it is

FURTHER ORDERED that the motion of defendant Union for summary judgment be, and it hereby is, GRANTED; and it is

FURTHER ORDERED that the motion of defendant Chrysler for summary judgment be, and it hereby is, GRANTED.

/s/ JOHN W. POTTER
United States District Judge

Judgment Entry of the District Court

(Filed April 17, 1986)

No. C 84-7273

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

CHRYSLER WORKERS ASSOCIATION, *et al.*,

v.

CHRYSLER CORPORATION, *et al.*

Decision by Court. This action came to trial or hearing before the Court with the judge (magistrate) named above presiding. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the motion of defendant General Dynamics Land Systems, Inc. to dismiss be, and it hereby is, granted. The motion of defendant Union for summary judgment be, and it hereby is, granted. The motion of defendant Chrysler for summary judgment be, and it hereby is, granted.

/s/ JOHN W. POTTER
United States District Judge

Order of the District Court Modifying Opinion

(Filed April 25, 1986)

Case No. C 84-7273

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

CHRYSLER WORKERS ASSOCIATION, *et al.*,
Plaintiffs,

vs.

CHRYSLER CORPORATION, *et al.*,
Defendants.

ORDER

POTTER, *J.:*

The first sentence of the second full paragraph on page 26 [A61] of the Court's April 16, 1986 opinion and order is hereby amended by interlineation to read as follows:

> Plaintiffs' mere ignorance of language in or changes to the various agreements, by itself, did not satisfy the requirement of due diligence and was not, therefore, sufficient to toll the statute of limitations.

IT IS SO ORDERED.

/s/ JOHN W. POTTER
United States District Judge

Order of the United States Court of Appeals for the Sixth Circuit Denying Petition for Rehearing

(Filed January 19, 1988)

No. 86-3361

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

CHRYSLER WORKERS ASSOC., *et al.*,
Plaintiffs-Appellants,

v.

CHRYSLER CORPORATION, *et al.*,
Defendants-Appellees.

ORDER

Before: MARTIN, WELLFORD and NELSON, *Circuit Judges*

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HENMAN
Clerk

Letter from UAW International Executive Board Indicating Date of Decision

SOLIDARITY HOUSE
5000 East Jefferson Ave.
Detroit, Michigan 46214
Phone (313) 624-5000

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW

OWEN F. BIEBER, *President*

RAYMOND E. MAJERUS, *Secretary-Treasurer*

Vice-Presidents

Bill Casstevens • Donald F. Ephlin • Odessa Komer
Marc Stepp • Robert White • Stephen P. Yokich

December 1, 1983

Mr. Joseph T. Gaw, Member
Local Union 2075
R.R. 5, Box 8B
New Castle, Indiana 47362

Dear Brother Gaw:

Your appeal to the International Executive Board, submitted under Article 33, Section 3(d) of the International Constitution, has been processed by my office to the International Executive Board in accordance with Article 33, Section 3.

In accordance with the established procedure, the attached is the decision of the International Executive Board on your appeal.

Fraternally,

Owen Bieber
President

OB:gms
opeiu494
attachment
CERTIFIED MAIL

cc: Joseph Tomasi, Director, Region 2B
Dallas Sells, Director, Region 3
Ed Finn, Int. Rep., Region 2B
Donnie Davis, Int. Rep., Region 3
Robert Stansell, Int. Rep., Chrysler Department
Stephen L. Jones, President, LU 371
Michael Atkins, Recording Secretary, LU 371
Darrell Cole, President, LU 2075
Robert A. Mitchem, Recording Secretary, LU 2075

(3)

No. 87-1682

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

CHRYSLER WORKERS ASSOCIATION, *et al.*,
Petitioners,

v.

CHRYSLER CORPORATION; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW LOCALS #371, #1331, #1435, #2035 and #2147,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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RESPONDENT UAW'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Is the Sixth Circuit Court of Appeals in conflict with the view expressed by other circuit courts that the staute of limitations explicated in *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983) should be tolled pending an employee's exhaustion of internal union remedies?

2. Did the Sixth Circuit Court of Appeals fully and properly adjudicate all of plaintiffs' causes of action?

3. Did the Sixth Circuit Court of Appeals properly find that defendant Chrysler Corporation did not violate its contractual responsibilities?

4. Is the issue of whether plaintiffs were entitled to a jury trial properly before this Court?

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-1682

CHRYSLER WORKERS ASSOCIATION, *et al.*,
Petitioners,

v.

CHRYSLER CORPORATION; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW LOCALS #371, #1331, #1435, #2035 and #2147,
Respondents,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

RESPONDENT UAW'S BRIEF IN OPPOSITION

PRAYER

The Respondents International Union, United Automobile, Aerospace & Agricultural Implement Workers of America—UAW, Locals # 371, # 1331, # 1435, # 2035 and # 2147, respectfully request that this Court deny the petition for writ of certiorari seeking review of the Sixth Circuit's opinion in this case. That opinion is reported at 834 F.2d 573 (6th Cir. 1987).

STATEMENT OF THE CASE

Respondents accept the facts as stated by the Sixth Circuit. Petitioners' Statement of the Case is misleading and inaccurate in several respects.

Iinitially, it must be noted that although petitioners refer several times to "classes of plaintiffs", this case was not brought as a class action. Formal class certification was neither sought nor granted at any stage of this litigation.

Further, petitioners fail to acknowledge that their acceptance of work opportunity at the Lima Tank plant pursuant to the 1979 collective bargaining agreement allowed them to carry their full seniority with them for benefits purposes, i.e. holiday pay, payment in lieu of vacations, pensions, insurance and the Supplemental Employment Benefit Plan. Additionally, none of the plaintiffs came to the Lima Tank facility as "new hires" in that their work opportunity status excused them from the probationary period required of off-the-street hirees.

To reiterate, all plaintiffs, including the so-called Indiana plaintiffs who came from Chrysler's plant in New Castle, Indiana, received the benefits of work opportunity status including waiver of the probationary period and use of their full seniority for benefits purposes. All plaintiffs, including the Indiana plaintiffs, also bore the burden of work opportunity status—that they were no longer entitled to be recalled to their home plants in line with their seniority. Instead, plaintiffs under the terms of the 1979—1982 collective bargaining agreement between Chrysler and the UAW, could get back to their home plants in only one of three ways. Pursuant to § 65 of the collective bargaining agreement, employees accepting work at a plant in the same labor market area as their home plant "shall have no right to return to their former plants unless and until they are permanently laid-off from the new plant." Pursuant to the Ohio Letter of

Understanding employees working at a plant more than 50 miles from their home plant "shall be recalled to [their home plants] before it hires new employees unless such a recall would adversely affect the continuous, efficient, and orderly operation of either of the plants involved." Lastly, pursuant to the Memorandum of Understanding Work Opportunity, which is a supplement to the 1979 collective bargaining agreement, employees who accepted work opportunity could at two times during the contract term make an election to return to their home plant, if the job to which they would return would otherwise have been filled by a new hire. That Memorandum of Understanding, commonly known as "Sadie Hawkins", also provided that Chrysler would not incur liability for violations or error in the administration of the Memorandum.

Thus, during 1981-1982, at the time that Chrsyler was contemplating the sale of its Defense subsidiary, [Chrysler Defense Inc.] which included the tank plants such as Lima, the employees working at the Lima plant who came from other Chrsyler plants under work opportunity were already "locked in" at Lima and unable to return to their home plants under the normal recall procedure but instead were limited to the procedures of § 65 (return upon indefinite layoff); the Ohio Letter (return when home plant hires new employees if such return does not adversely affect operations of either plant); or the Sadie Hawkins letter (exercise option to return when home plant hires new employees and other conditions are met.)[1]

The UAW was not given an opportunity to bargain over Chrysler's decision to sell the Defense plants to General Dynamics but did engage in discussion over the effects of that decision. Eventually, General Dynamics

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[1] At the time of sale, these contingent return rights were of speculative value given Chrysler's real potential for collapse.

agreed to recognize the UAW as the bargaining agent for employees at the plants formerly run by Chrysler Defense, Inc. and to be bound by all labor agreements between Chrysler and the UAW until the expiration of those agreements which was September 14, 1982. Subsequently, representatives of the UAW and General Dynamics prepared a document which was a "de-Chryslerized" version of the 1979 collective bargaining agreement which changed the name and covered plants to reflect the plants that were purchased by General Dynamics. It is undisputed that the document, which was effective from March 16, 1982 until September 14, 1982, did not alter any rights that covered employees possessed under the Chrysler agreement.

At the insistence of UAW International vice-president, Marc Stepp, representatives of the UAW, Chrysler and General Dynamics met in April of 1982 to iron out unique potential problems which might arise in transfers of employees between Chrysler and General Dynamics. As a result of that meeting the parties created a methodology to handle the transfers and memorialized their agreement that any contractual rights an employee had under the 1979-1982 Chrysler collective bargaining agreement to leave what was now a General Dynamics plant to return to a home Chrysler plant or vice versa were preserved until September 14, 1982, the date of the expiration of the UAW-Chrysler agreement and the UAW-General Dynamics agreement. The agreement was set forth in two companion documents. The first was a letter from George Chopp of General Dynamics to Marc Stepp of the UAW dated May 18, 1982. The second virtually identical document was a letter to Marc Stepp from T.W. Miner of Chrysler Corporation dated June 7, 1982. All parties to those agreements agree that the documents preserved and clarified whatever home plant seniority rights existed under the 1979 Chrysler agreement until the end of that agreement.

In July of 1982, the UAW held two meetings with the affected UAW membership of the Lima Tank plant to explain that their contractual rights to return to their home Chrysler plants were still in effect as they had existed under the 1979 UAW-Chrysler collective bargaining agreement until the expiration of that agreement in September of 1982. The local posted a notice announcing the first of these meetings. The notice read:

ATTENTION
WORK OPPORTUNITY EMPLOYEES

MEETING IS SCHEDULED TO EXPLAIN THE SENIORITY STATUS OF OUR WORK OPPORTUNITY MEMBERS. IT WILL BE HELD THURSDAY, JULY 1, 1982 AT THE UAW UNION HALL.

FIRST MEETING .....1:00 P.M.

SECOND MEETING .....4:00 P.M.

INTERNATIONAL REPRESENTATIVES WILL BE HERE TO EXPLAIN THE AGREEMENT AND TO ANSWER QUESTIONS.

DARRELL COLE, PRESIDENT
LOCAL 1075, UAW

Subsequently, the UAW and General Dynamics negotiated a new collective bargaining agreement which was effective from September 27, 1982 to September 14, 1985. That new collective bargaining agreement does not contain § 65, the Ohio Letter or the Sadie Hawkins letter as existed in the 1979 UAW-Chrysler collective bargaining agreement or any language comparable thereto, nor does it contain any other provision allowing tank plant employees of General Dynamics any return rights to home Chrysler plants. The contract was explained to the Lima membership at a ratification meeting held in Lima in September of 1982 and they ratified it.

During the same period of time Chrysler and the UAW entered into a new collective bargaining agreement which altered and/or amended the 1979-1982 Chrysler-UAW collective bargaining agreement. The new agreement deletes the Lima Tank plant from the index of units and deletes the Lima Tank plant local from the title page which describes the parties to the agreement.

Subsequently, several employees at the Lima Tank plant (including some but not all of the Plaintiffs) filed or sought to file grievances protesting what they perceived to be a refusal to allow them to be recalled to their home plants at Chrysler. The UAW did not process the grievances that were actually filed and would not file any grievances on the issue based upon its assessment that the grievances were not meritorious because no contractual provisions were violated. The UAW so informed the employees.

Only one Plaintiff, Joseph Gaw, processed a timely appeal to the Public Review Board on the withdrawal of his grievance.[2]

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[2] Mr. Gaw appealed to the Public Review Board [PRB] from the withdrawal of his grievances protesting his classification as a work opportunity employee and protesting his failure to be recalled to his home Chrysler plant in New Castle, Indiana. The latter grievance challenging, in particular, the June 7, 1982 Letter of Understanding between the UAW and Chrysler. The PRB found that his challenge to the contract interpretation under which he was considered as a work opportunity employee was untimely.

With regard to Gaw's challenge to the June 7, 1982 UAW-Chrysler letter agreement, the PRB found that the letter agreement "did not change the seniority or recall rights of any employee, but reaffirmed their continued existence following the sale of Chrysler Defense Industries by the parent corporation." The PRB also found that "It is true that the expiration of the collective bargaining agreement while [sic] Chrysler and the subsequent ratification of the new agreement by General Dynamics employees terminated all recall rights to Chrysler Corporation."

REASONS FOR DENYING THE WRIT OF CERTIORARI

I. THE SIXTH CIRCUIT COURT OF APPEALS IS NOT IN CONFLICT WITH THE VIEW EXPRESSED BY OTHER CIRCUIT COURTS THAT THE STATUTE OF LIMITATIONS EXPLICATED IN *DEL-COSTELLO V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS*, 462 U.S. 151 (1983) SHOULD BE TOLLED PENDING AN EMPLOYEE'S EXHAUSTION OF INTERNAL UNION REMEDIES.

It is respectfully submitted that the Sixth Circuit's reference to the statute of limitations in regard to the plaintiffs from Indiana is dictum and unnecessary to the holding that all plaintiffs had no cause of action against Chrysler or the unions. With respect to the unions, the Sixth Circuit specifically observed:

> Although we do not find that such a decision is mandated as a matter of law under the statute of limitations defense asserted by defendant unions, we affirm the judgment in their favor because of the peculiar nature of the § 301 claim.
>
> [Decision of the Sixth Circuit filed November 25, 1987 (A22)]

The Sixth Circuit held that Chrysler did not violate its contractual responsibilities with respect to plaintiffs' claimed transfer rights and since plaintiffs' claim against the unions was "inextricably interdependent" upon plaintiffs' claim against Chrysler, plaintiffs' claim against the unions must also fail. All plaintiffs, including the Indiana plaintiffs, claim under the same contract. As such, the cause of action of the Indiana plaintiffs is barred by the Sixth Circuit holding that Chrysler did not violate its contractual obligations. The statute of limitations is merely an additional ground to support the judgment against the Indiana plaintiffs.

Thus, even assuming arguendo that the Sixth Circuit's view as to the applicability of the bar of the statute of limitations to the Indiana plaintiffs some how raises a conflict (which Respondent Unions vigorously disagree) the conflict itself would not be sufficient reason to grant review because this case was and could be decided on the contractual ground making resolution of the alleged conflict irrelevant to the outcome of the case. See, e.g. *Sommerville v. United States*, 376 U.S. 909 (1964); *The Monrosa v. Carbon Black, Inc.*, 359 U.S. 180 (1959).

Additionally, the Sixth Circuit's opinion does not conflict in any way with decisions from other courts which address the issue of whether exhaustion of internal union remedies tolls the statute of limitations. The Sixth's Circuit's sole reference to tolling referred to the filing of the "grievance" by Gaw. The Sixth Circuit did not mention the internal union appeal. The grievance procedure is governed by the collective bargaining agreement between the employer and the union. The internal union appeal procedure is separate, distinct and independent from the contractual grievance procedure. It arises not from the contract but from the union constitution. Although petitioners may well disagree with the court's finding, based on the particular facts of the Indiana plaintiffs' claims, that the Gaw grievance did not toll the statute, such a finding is strictly confined to the facts of the case, does not conflict with any other circuit decision and presents no issue worthy of review.

II. THE SIXTH CIRCUIT COURT OF APPEALS FULLY AND PROPERLY ADJUDICATED ALL OF PLAINTIFFS' CAUSES OF ACTION.

Respondent Unions respectfully submit that petitioners raise no question of constitutional import here. They received a full and fair opportunity to be heard in their briefs and in oral argument. They received a full and fair adjudication on all of their claims in the District

Court, in the Sixth Circuit's opinion and in the denial of their motion for rehearing. Indeed, in denying the petition for rehearing, the Sixth Circuit specifically concluded:

> "that the issues raised in the petition were fully considered upon the original submission and decision of the case."
>
> [Order of the Sixth Circuit Denying Petition for Rehearing, A67]

What petitioners fail to acknowledge is that the Sixth Circuit specifically addressed their allegations which were independent of the contract claim when it found:

> In the context of the economic conditions then faced by Chrysler and the sale of its defense unit to a new and unrelated employer in early 1982, we find the arrangement worked out by UAW with Chrsyler and with GD, the purchaser of the Lima plant, as a matter of law to constitute neither a conspiracy nor a fraud operating against the interests of former Chrysler employees. Shortly after the letter agreement the Union put plaintiffs and other "work opportunity employees" who had transferred to the Lima plant on notice of a meeting to be attended by International Union representatives in July of 1982 to "explain the agreement and to answer questions." Plaintiffs undeniably had the opportunity to ask the Union about their status as GDLS employees. There was no "affirmative" act of concealment.
>
> [Decision of the Sixth Circuit filed Nov. 25, 1987 (A20, 21)]

In light of those factual findings, there was no predicate for the cause of action recognized by the Sixth Circuit's earlier case of *Storey v. Teamsters*, 759 F.2d 517 (6th Cir. 1985). Further, as the "arrangement worked out by the UAW with Chrysler and with GD", i.e., the letter agreements, merely continued existing rights until the expiration of the collective bargaining agreement,

and did not change them, there was no agreement upon which the Unions had a duty to hold a ratification vote and whatever changes or deletions occurred in the new UAW-GD agreement or the new UAW-Chrysler agreement were undisputedly put to a ratification vote.

Petitioners merely disagree with the decisions of the Sixth Circuit and their disagreement does not give rise to any issue worthy of review.

III. THE SIXTH CIRCUIT COURT OF APPEALS PROPERLY FOUND THAT DEFENDANT CHRYSLER CORPORATION DID NOT VIOLATE ITS CONTRACTUAL RESPONSIBILITIES.

It is obvious from the form of this question as presented by petitioners, that petitioners raise no issue worthy of review but merely disagree with the facts as found by the Sixth Circuit. This Court has consistently refused to grant certiorari to review evidence and discuss specific facts. *Texas v. Mead*, 465 U.S. 1041 (1984); *NLRB v. Hendricks County Rural Electric Membership Corp.*, 454 U.S. 170, 177 n.8 (1981); *United States v. Johnston*, 268 U.S. 220 (1925).

The Sixth Circuit here applied well-settled principles of law to the facts at hand. It is beyond dispute that the employer must deal directly with the Union as the exclusive collective bargaining representative. *J. I. Case Co. v. Labor Board*, 321 U.S. 332 (1944); *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967) rehearing denied 389 U.S. 892 (1967); *Emporium Capwell Co. v. Community Org.*, 420 U.S. 50 (1975). The agreements which petitioners seek to attack were entered into between an International Vice President of the UAW and a Vice President, Industrial Relations of Chrysler. It is simply ludicrous to argue that either of those two individuals did not have actual or apparent authority to bind their respective parties. See, e.g., *NLRB v. Truckdrivers, Chauffeurs & Helpers, Local Union No. 100*, 532 F.2d 569 (6th Cir.) *cert. denied* 429 U.S. 859 (1976).

The decision of the Sixth Circuit on the contract claims was correct and in accordance with long settled law. Petitioners raise no cognizable grounds to review that decision.

IV. THE ISSUE OF WHETHER PLAINTIFFS WERE ENTITLED TO A JURY TRIAL IS NOT PROPERLY BEFORE THIS COURT.

The Sixth Circuit properly granted summary judgment to respondents in accordance with this Court's decision in *Celotex Corporation v. Catrett*, —— U.S. ——, 106 S.Ct. 2548 (1986). Petitioners raise no issue worthy of this Court's review of that decision. As such, it would be wasteful of this Court's resources to even discuss the jury trial issue at this stage.

CONCLUSION

It is clear from the Petition that petitioners are merely asking this Court to re-evaluate all the evidence that was fairly and fully evaluated by the courts below. The decision of the Sixth Circuit was correctly rendered in accordance with well-settled principles of law. Petitioners raise no issue worthy of the Court's precious time. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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No. 87-1682

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

CHRYSLER WORKERS ASSOCIATION, *et al.*,
Petitioners,

v.

CHRYSLER CORPORATION, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

RESPONDENT CHRYSLER CORPORATION'S BRIEF IN OPPOSITION TO THE PETITION

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May 9, 1988

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QUESTIONS PRESENTED

As viewed by respondent Chrysler Corporation, the instant petition presents the following questions:

1. Whether either the district court or the court of appeals was required to presume that there was a "genuine issue as to any material fact" which precluded summary judgment.

2. Whether after a district court has held that a limitations statute bars plaintiffs' asserted claims against a defendant and has entered summary judgment in favor of that defendant and a court of appeals, without agreeing in all respects with the district court's analysis of the limitations issue, correctly affirms that judgment on the additional grounds that defendant has not breached its contract upon which the plaintiffs' asserted claims were based and is otherwise entitled to judgment, there is any need for further review by this Court.

3. Whether after both a district court and a court of appeals have fully examined and considered plaintiffs' asserted claims and have rendered detailed and thorough decisions adverse to plaintiffs, this Court should be persuaded either by unsupported and unsupportable arguments or by meaningless arguments to permit further review and thereby unnecessarily to burden further its heavy docket.

PARTIES

The statement as to parties in the petition is correct and will not be repeated here. As of June 1, 1986, Chrysler Corporation's name was changed to Chrysler Motors Corporation; and it became a subsidiary of Chrysler Corporation.

Except where the context otherwise requires, petitioners will be referred to herein as "plaintiffs"; and respondent Chrysler will be referred to herein as either "defendant Chrysler" or "Chrysler."

Unless the context specifically requires separate designations, the union respondents will be referred to collectively herein as either "defendant Union" or "Union."

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OPINIONS BELOW

The opinion of a unanimous panel of the United States Court of Appeals for the Sixth Circuit is reported as *Chrysler Workers Association v. Chrysler Corp.*, 834 F.2d 573 (6th Cir. 1987), and has been printed in the appendix, at A 1.

The opinion of the United States District Court for the Northern District of Ohio, Western Division, was filed April 16, 1986, is published at 124 L.R.R.M. 2924 (BNA), and is printed in the appendix, at A 24.

STATUTES INVOLVED

The provisions quoted in the petition, at 2-5, exceed, but include some of, those which defendant Chrysler considers involved in determination of the petition as to it. Additionally involved are 29 U.S.C. §160(b) (1983), which reads in pertinent portion:

> *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge.

and 29 U.S.C. §411(a)(4) (1983), which reads in pertinent part:

> *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof. . . .

STATEMENT OF THE CASE

As to defendant Chrysler, the instant action is a so-called hybrid §301/fair representation action. 29 U.S.C. §185 (1983). As to defendant Chrysler, plaintiffs' action is supported by neither the facts nor the law.

In order to place the questions presented for review in proper perspective, it is necessary to review some facts from many years ago. Unfortunately, since plaintiffs' supposed statement of the case in their petition is only partially complete, this statement, for this additional reason, is longer than would normally be preferred. For the convenience of the Court, the facts covering this lengthy time span will generally be summarized in their approximate chronological order.

As the decade of the 1980's opened, the United States automobile industry had severe economic problems. It was then common information nationally that, of the big three American manufacturers, defendant Chrysler was suffering first and foremost.

Defendant International Union had long been the exclusive collective bargaining agent of the employees of defendant Chrysler, including plaintiffs. The basic governing collective bargaining agreement then in existence was dated October 25, 1979, and provided for its continuance until September 14, 1982.

The 1979 collective bargaining agreement, at 69-70, contained a section entitled "(65) Work Opportunity for Laid Off Employees." Under the terms of that section, an employee laid off at one Chrysler plant could at times undertake employment at another Chrysler plant. If an employee so undertook employment at another Chrysler plant, he could return to his "home plant" only under certain conditions. Section 65(b), at 69, also specifically provided: "Employees accepting work under this Subsection (b) shall have no right to return to former plants unless and until they are permanently laid off from the new plant." While employment was diminishing at Chrys-

ler's automobile plants, its military tank plants, including a new plant at Lima, Ohio, were expanding their employment; and plaintiffs, when laid off at automobile plants, took advantage of the contractual opportunity by undertaking employment in a tank plant. (As pertinent here, no employee at the Lima Tank Plant was permanently or indefinitely laid off between March and September 14, 1982.)

Under the 1979 collective bargaining agreement, there was also a "Memorandum of Understanding Work Opportunity" designated as "M-1," which is contained in a separate 1979 booklet, at 122-25, entitled "Letters, Memoranda and Agreements." This memorandum, which was commonly known as "Sadie Hawkins," also affected the work opportunity program. It provided in effect that an employee who had undertaken employment at a new plant under the work opportunity program could at a designated time during a designated year make an irrevocable election to return to his "home plant" if the job to which he would be returning would have otherwise been filled by a new employee, if there would be no adverse effects upon either of the involved plants, and if other conditions were met. The concluding paragraph of this memorandum further provided: "6. The Corporation shall *not* incur any *liability for* claimed *violations* or errors in the administration of this Memorandum of Understanding." Memorandum of Understanding Work Opportunity, at 155 (emphasis added).

Finally, under the 1979 collective bargaining agreement, there was also a letter agreement dated October 25, 1979, signed by Mr. Marc Stepp for defendant Union and by Mr. Thomas W. Miner of defendant Chrysler, designated as "Work Opportunity - Ohio" and "65(n)," which is also contained in the separate 1979 booklet, at 110-11, entitled "Letters, Memoranda and Agreements." This letter agreement, commonly known as the "Ohio letter," also affected the work opportunity program. The Ohio letter is in effect a subsidiary letter agreement to both the 1979 agreement and the Sadie Hawkins memorandum and relates to work

opportunities in other Ohio plants more than fifty miles from the "home plant." The Ohio letter, at 110, provided in effect that an employee who had undertaken employment at a new plant under the work opportunity program could be recalled, prior to the hiring of new employees at the "home plant," "if such a recall . . . [did not] adversely affect the continuous, efficient, and orderly operation of either of the plants involved." The Ohio letter, at 110, also provided that "employees who are laid off from the plant in which they were placed pursuant to the first sentence of this letter shall at the time of such layoff be governed by the provisions of Section (65)(b) of the Production and Maintenance Agreement dated October 25, 1979." The Ohio letter, at 111, further provided "that employees currently on layoff from an Ohio plant will be given forty-five (45) days to make application for work opportunity at other Ohio plants pursuant to this letter." Thus, as with the work opportunity program itself and the Sadie Hawkins memorandum, but for additional reasons, an employee's return to his "home plant" was also not automatic under the Ohio letter.

In an effort to gain some much-needed liquidity towards surviving its financial crisis, defendant Chrysler sold its total ownership shares of Chrysler Defense Inc., which operated its defense plants including the Lima Tank Plant, to General Dynamics; the corporation's name was changed to General Dynamics Land Systems, Inc.; and plaintiffs became General Dynamics, rather than Chrysler, employees. When these events occurred, the 1979 collective bargaining agreement between defendant Union and defendant Chrysler was still in effect.

The 1979 collective bargaining agreement between defendant Union and defendant Chrysler had an expiration date of September 14, 1982. Said agreement initially applied to defendant Chrysler's then "Lima Tank" facility and also to defendant Union's "Local 2075" at that facility. Prior to that expiration date of September 14, 1982, and after defendant General Dynamics' purchase involved here, defendant Union and defendant General Dynamics

entered into an interim agreement by which in effect the substantive terms of the 1979 collective bargaining agreement between defendant Union and defendant Chrysler, with appropriate changes to reflect the ownership changes, were continued until that agreement expired on September 14, 1982.

In the meantime, defendant Union also sought, and also obtained, from each of the two employers a separate letter agreement to provide for the continuation of the specified transfer rights of employees between the two employers through that expiration date. The first such letter agreement was dated May 18, 1982, and was signed by Mr. George W. Chopp for General Dynamics and by Mr. Marc Stepp for the Union. The second such letter agreement was dated June 7, 1982, and was signed by Mr. Thomas W. Miner for Chrysler and by Mr. Marc Stepp for the Union. This June 7, 1982, letter agreement provided in most pertinent parts:

> Interplant transfer rights are limited to plants within each corporation's bargaining units, and the parties agree that such transfers cannot include inter-company transfers from a Chrysler facility to a GDLS facility and vice versa.
>
> . . .
>
> 1. An employee of CDI (now GDLS) who would otherwise qualify for the right to return to a Chrysler Corporation plant based on Section 54(c) or Section 65(b) of the applicable Chrysler-UAW agreements, may exercise the opportunity to return to his former plant if indefinitely laid off by GDLS according to the provisions of said agreements, *on or before September 14, 1982*. Unless indefinitely laid off by that date any such employee shall lose any right to return to Chrysler.
>
> . . .
>
> 4. Between March 12, 1982 and *September 14,*

> *1982*, any employee, if otherwise eligible, may apply only once for such return.
>
> 5. This letter is submitted with the understanding that the UAW has received a similar letter from GDLS covering Chrysler employees who may be indefinitely laid off on or before *September 14, 1982*. The effect of the return of any Chrysler employee to GDLS will be to terminate seniority at Chrysler. However, if a current Chrysler employee returns to GDLS under the terms of this letter and is then laid off from GDLS, such employee may use the credit units in the SUB Plan at Chrysler in accordance with the terms of the Plan.

June 7, 1982, letter (emphasis added).

In the autumn of 1982, defendant Union and defendant General Dynamics negotiated for a new collective bargaining agreement. Thereafter, and following a short strike, a new 1982 collective bargaining agreement between defendant Union and defendant General Dynamics was ratified by the appropriate membership of defendant Union and was then executed and implemented by the parties in September, 1982. This new 1982 collective bargaining agreement between defendant Union and defendant General Dynamics had an effective date of September 27, 1982, and it contained no transfer provisions to facilities of defendant Chrysler.

In the autumn of 1982, defendant Union and defendant Chrysler also negotiated for a new collective bargaining agreement as to defendant Chrysler's then remaining facilities. After those negotiations, the tentative new 1982 collective bargaining agreement between defendant Union and defendant Chrysler was then taken by defendant Union to a ratification vote by the appropriate membership of defendant Union. Defendant Union recommended, reluctantly but realistically, the ratification of this "tentative new short-term agreement" to its membership. In a letter dated September 20, 1982, defendant Union wrote that

the only "alternative . . . to accepting this agreement . . . [was] a prolonged strike . . . [which could] result . . . [in] Chrysler's bankruptcy and the possible loss of your job and tens of thousands of others." This new 1982 agreement was then ratified by that membership. Thereafter, this new 1982 agreement, which was subsequently dated December 10, 1982, was executed and implemented by the parties.

In this new 1982 collective bargaining agreement between defendant Union and defendant Chrysler, all references to defendant Chrysler's former "Lima Tank" facility and also all references to defendant Union's "Local 2075" at that former facility were deleted. Neither the 1982 agreement nor any subsequent agreement between defendant Union and defendant Chrysler covered plaintiffs who were no longer employed by Chrysler.

Referring to this history, the district court in the opinion and order filed on April 16, 1986, subsequently summarized in most pertinent parts as follows:

> Neither of the respective post-September 14, 1982 collective bargaining agreements between GDLS and the UAW and between Chrysler and the UAW provided for inter-corporation work opportunity transfer rights or for cross-national bargaining unit transfer rights. Nor did either of said post-September 14, 1982 agreements expressly or implicitly renew or extend the May 18, 1982 and June 7, 1982 letters of understanding. No plaintiff while working at the Lima, Ohio tank plant was indefinitely laid off either by Chrysler before March 16, 1982 when Chrysler sold CDI to GDLS or by GDLS before September 14, 1982 when both the October 25, 1979 agreement and the aforesaid letters of understanding expressly expired.
>
> . . .
>
> As to employees of the Lima, Ohio tank plant including plaintiffs, the October 25, 1979 collec-

> tive bargaining agreement terminated September 14, 1982. Said termination was in accordance with the express terms of the 1979 agreement and the June 7, 1982 letter of understanding. The Court finds that at some point prior to six months preceding the date on which this lawsuit was commenced, plaintiffs discovered or, in the exercise of reasonable diligence, should have discovered the acts of defendants constituting the violations alleged by plaintiffs. . . . The Court finds that plaintiffs' causes of action accrued and the applicable statute of limitations period began to run when plaintiffs discovered or in the exercise of reasonable diligence should have discovered the agreements between defendants (the May 18, 1984 [sic—1982 intended] and June 7, 1982 letters of understanding and the September 27, 1982 GDLS/UAW agreement) which plaintiffs claim abrogated or extinguished their Chrysler "home plant" recall/seniority rights.

Chrysler Workers Association v. Chrysler Corp., No. C 84-7273, Slip Op. at 22, 27 (N.D. Ohio filed Apr. 16, 1986) (Appendix, at A 55, A 63) ("April 16, 1986, Order").

Defendant Chrysler neither sought nor was willing to reinstate any of plaintiffs in employment in a Chrysler plant where formerly employed. Since its sale of Chrysler Defense, Inc., defendant Chrysler began to accomplish a dramatic economic recovery. Although the changed circumstances inspired plaintiffs to desire a return to Chrysler employment, no plaintiff sustained any legally recoverable damage.

On or about March 23, 1984, the plaintiffs commenced the instant action against eight defendants, which included the Union (the International Union and five of its local unions), General Dynamics, and Chrysler. Each defendant thereafter filed an answer to the subsequently-amended complaint. Each of such answers included a defense in the nature of a general denial and other defenses. Extensive discovery proceedings were then held.

Pursuant to Fed. R. Civ. P. 56, the defendants then filed separate motions for summary judgment and supporting briefs and affidavits. Each defendant advanced more than one position in support of its motion. As to defendant Chrysler's motion, the district court in the opinion and order filed on April 16, 1986, subsequently summarized defendant Chrysler's several positions in the following terms:

> Chrysler asserts that at all times pertinent to this lawsuit, defendant UAW was the exclusive collective bargaining agent for Chrysler's employees including plaintiffs, with which agent and not individual employees, Chrysler was legally required to negotiate those matters which are the subject of this lawsuit. Chrysler further asserts that it lawfully did so negotiate such matters with the UAW. Chrysler maintains that it has fully complied with all of its agreements with the Union which are the subject of this litigation. Chrysler further maintains that since the Union has not unlawfully breached its statutory duty of fair representation as plaintiffs' exclusive collective bargaining agent, plaintiffs cannot maintain this action against either the Union or Chrysler. Chrysler contends that, in any event, plaintiffs' instant hybrid §301/fair representation action is barred by the applicable six month statute of limitations.

April 16, 1986, Order at 12 (Appendix, at A 41). Briefing and related activities then followed.

On April 16, 1986, the district court filed an opinion and order which, among other actions, granted defendant General Dynamics' motion to dismiss and the other defendants' separate motions for summary judgment. April 16, 1986, Order (Appendix, at A 24-A 64). On the following day, April 17, 1986, the court also filed an accompanying judgment. *Chrysler*, No. C-84-7273 (N.D. Ohio filed April 17, 1986) (Appendix, at A 65). Approximately a week later,

April 25, 1986, the court also filed an order amending by interlineation the first sentence of the second full paragraph on page 26 of the opinion and order of April 16, 1986. *Chrysler*, No. C 84-7273 (N.D. Ohio filed April 25, 1986) (Appendix, at A 66).

In the opinion and order filed on April 16, 1986, the district court concluded its detailed analysis of the above-noted material facts with this telling sentence: "The *undisputed* facts demonstrate that plaintiffs' Chrysler home plant return/seniority rights which they enjoyed under the 1979 agreement, terminated September 14, 1982." April 16, 1986, Order at 27 (Appendix, at A 62) (emphasis added). The district court then held that plaintiffs' asserted hybrid §301/fair representation claims as to defendant Chrysler were barred by the applicable six-month statute of limitations. 29 U.S.C. §160(b) (1983). In so holding, the district court stated in part: "Finding the statute of limitations issue to be dispositive of this case, the Court does not substantively reach the merits of the remaining issues presently *sub judice*." April 16, 1986, Order at 20 (Appendix, at A 53).

On April 22, 1986, plaintiffs filed a notice of appeal to the Sixth Circuit. Extensive briefs were then filed with the Sixth Circuit, and oral arguments were thereafter heard by the Sixth Circuit. On November 25, 1987, the Sixth Circuit, in a detailed and thorough opinion, affirmed the district court's judgment. *Chrysler*, 834 F.2d 573 (Appendix, at A 1).

The Sixth Circuit, without agreeing "in all respects" with the district court's analysis of the statute of limitations issue, affirmed the district court's judgment, but the Sixth Circuit so affirmed on additional grounds. 834 F.2d at 581 (Appendix, at A 20). The Sixth Circuit stated that the district court "was not in error . . . in concluding that the New Castle plaintiffs are barred by the statute of limitations in their claim against Chrysler." 834 F.2d at 581 (Appendix, at A 19). The Sixth Circuit then added that "whether or not the statute of limitations constitutes

a bar to a claim under this agreement [the Sadie Hawkins Day agreement], the above [non-liability] language eliminating liability against Chrysler would preclude a claim thereunder." 834 F.2d at 581 (Appendix, at A 19). The Sixth Circuit then affirmed on grounds other than the statute of limitations and held: "Accordingly, we AFFIRM the judgment for all defendants." 834 F.2d at 583 (Appendix, at A 23). On or about December 8, 1987, plaintiffs filed a petition for rehearing, with suggestion for rehearing *in banc*, with the Sixth Circuit. On January 19, 1988, the Sixth Circuit denied that petition. *Chrysler*, No. 86-3361 (6th Cir. filed Jan. 19, 1988) (Appendix, at A 67).

On April 8, 1988, the instant petition for certiorari was served upon defendant Chrysler. On its face, the petition shows no good reason for this Court to review the decision of the Sixth Circuit. For the additional reasons set forth below, review by this Court is neither warranted nor appropriate.

SUMMARY OF ARGUMENT

What has occurred below was the entry of a classic, state-of-the-art summary judgment for defendant Chrysler in the district court. The court of appeals on somewhat different grounds has correctly affirmed that summary judgment. There is no unusual feature in this case to attract or merit the attention of, and further consideration by, this busy Court.

All of the judges below have agreed that the material facts required for determination of this case are undisputed or undisputable. Plaintiffs have been unable to demonstrate the presence of any genuine issues of material fact.

When economic conditions ravaged defendant Chrysler, plaintiffs took advantage of their rights under an appropriate then applicable collective bargaining agreement to gain the opportunity for work at a tank plant. Subsequently, after the economic climate of defendant Chrysler had improved and while plaintiffs continued to work at the tank plant, which had now changed ownership to an-

other employer, plaintiffs desired to return to employment with defendant Chrysler. There was no longer a collective bargaining agreement which accorded plaintiffs a right to return and plaintiffs did not qualify for a right to return under the provisions of even the then expired collective bargaining agreement under which they had undertaken work opportunity.

Plaintiffs filed this action against defendant Chrysler and defendant Union, both of whom had lawfully conducted their collective bargaining relationship. A third defendant, General Dynamics, was initially included in this action, but it was subsequently dismissed. The filing of the action was regarded as tardy (not in compliance with statutory limitations) by the district court. Without completely agreeing with the district court as to tardiness, the court of appeals determined, likewise as a matter of law, that defendant Chrysler was not in violation of its contractual obligations to plaintiffs and was otherwise entitled to judgment. The summary judgment rendered by the district court and its affirmance by the court of appeals were both legally correct.

Like plaintiffs' efforts to develop genuine issues of material fact, plaintiffs' attempts to challenge the applicable law are faulty and have correctly been so held below. It is more than time for the judicial process to end as to this dispute. Certiorari should be denied.

ARGUMENT - REASONS FOR DENYING THE PETITION

As to defendant Chrysler, all of the pertinent circumstances were carefully considered and determined by both the district court and the court of appeals. Additionally, well-settled principles of law also govern all of the matters set forth in the petition as to defendant Chrysler. The applicability of those principles here is heavily underscored by the entire record in the instant action. Those principles display that the decision of the court of appeals in affirming judgment for defendant Chrysler was correct and proper. As to defendant Chrysler, this is simply not the

type of case that either demands or requires this Court's precious time. For the additional reasons set forth below, the petition should be denied.

I. NEITHER THE DISTRICT COURT NOR THE COURT OF APPEALS WAS REQUIRED TO PRESUME THAT THERE WAS A "GENUINE ISSUE AS TO ANY MATERIAL FACT" WHICH PRECLUDED SUMMARY JUDGMENT.

Rule 56 of the Federal Rules of Civil Procedure provides in most pertinent parts:

> The judgment sought *shall be rendered forthwith* if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no *genuine* issue as to any *material* fact and that the moving party is entitled to a judgment *as a matter of law.*

Fed. R. Civ. P. 56(c) (emphasis added).

> When a motion for summary judgment is made and supported as provided in this rule, *an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading,* but the adverse party's response, by affidavits or as otherwise provided in this rule, *must* set forth *specific* facts showing that there is a genuine issue for trial. If the adverse party does not so respond, *summary judgment,* if appropriate, *shall be entered against the adverse party.*

Fed. R. Civ. P. 56(e) (emphasis added).

In addition to the language of Fed. R. Civ. P. 56 itself, three recent decisions by this Court interpreting Fed. R. Civ. P. 56 have further underscored the propriety of the judgment here. Each of these three decisions involved the reversal of a decision by a court of appeals, which had reversed a decision granting summary judgment by a district court. Each of these three decisions is noted briefly below.

In early 1986, this Court decided *Matsushita Electric Industrial Co. v. Zenith Radio*, 475 U.S. 574 (1986), a complex antitrust conspiracy case in which even the statement of the facts was "a daunting task." 475 U.S. at 576. As most pertinent here, this Court stated:

> To survive petitioners' [defendants'] motion for summary judgment, respondents [plaintiffs'] must establish that there is a genuine issue of material fact. . . .
>
> Second, the issue of fact must be "genuine." Fed. Rules Civ. Proc. 56(c), (e). When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts. . . . In the language of the Rule, the nonmoving party must come forward with "specific facts showing that there is a *genuine issue for trial.*" Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no "genuine issue for trial."

475 U.S. at 585-86 (emphasis in original).

Several months later in 1986, this Court decided *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), "which involved the question whether the clear-and-convincing-evidence requirement [for actual malice in a libel suit] must be considered by a court ruling on a motion for summary judgment under Rule 56." 477 U.S. at 244. As most pertinent here, this Court stated:

> By its very terms, this standard [of Fed. R. Civ. P. 56(c)] provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.
>
> As to materiality, the substantive law will identify which facts are material. Only disputes over

> facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted. . . .
>
> . . .
>
> . . .The movant has the burden of showing that there is no genuine issue of fact, but the plaintiff is not thereby relieved of his own burden of producing in turn evidence that would support a jury verdict. Rule 56(e) itself provides that a party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial.

Id. at 247-48, 256 (emphasis in original). In the instant action, the Sixth Circuit also carefully considered this decision. *Chrysler*, 834 F.2d at 578 (Appendix, at 13).

On the same day, this Court also decided *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), where, after the plaintiff "was unable to produce evidence in support of her allegation in her wrongful-death complaint that the decedent had been exposed to petitioner's asbestos products. . .," a divided panel of a court of appeals held "petitioner's failure to support its motion with evidence tending to *negate* such exposure precluded the entry of summary judgment in its favor." 477 U.S. at 319 (emphasis in original). This Court then reversed. As most pertinent here, this Court stated:

> In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. . . .

. . .

> . . .Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed "to secure the just, speedy and inexpensive determination of every action." Fed. Rule Civ. Proc. 1. . . . *Rule 56 must be construed with due regard* not only for the rights of persons asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury, but *also for the rights of persons opposing such claims and defenses to demonstrate in the manner provided by the Rule, prior to trial, that the claims and defenses have no factual basis.*

Id. at 322, 327 (emphasis added).

Under all of the present circumstances, an exhaustive recapitulation is not needed. Here, the claims which plaintiffs have attempted to assert against defendant Chrysler have been made from whole cloth. Fortunately, however, an expensive, time-consuming, and unwarranted trial of this meritless action is not required. The plaintiffs simply could not make "genuine" issues of "material" facts from their whole cloth to preclude judgment. Unsubstantiated, self-serving declarations and the like are not sufficient substitutes for "genuine issue[s] as to any material fact." Similarly, and also contrary to plaintiffs' transparent assertions, disputes over incidental and insignificant matters, which occur in virtually all litigation, are not controlling.

In the instant action, neither the district court nor the court of appeals was required to presume that there was a "genuine issue as to any material fact" which precluded judgment for the defendants. Before the district court and the court of appeals, defendants established that they were entitled to judgment, and plaintiffs completely and totally failed to establish otherwise. In so failing, plaintiffs have already taken more than their share of the resources and

energies of the judicial system and their opposing litigants. By the petition, this Court, although already needlessly and unjustifiably burdened by plaintiffs, now has an opportunity to promote further the interests and administration of justice by endorsing the usages of the judicial procedures used by both the district court and the court of appeals. This Court should now take full advantage of this opportunity by declining further review of the decisions below.

II. AFTER A DISTRICT COURT HAS HELD THAT A LIMITATIONS STATUTE BARS PLAINTIFFS' ASSERTED CLAIMS AGAINST A DEFENDANT AND HAS ENTERED SUMMARY JUDGMENT IN FAVOR OF THAT DEFENDANT AND A COURT OF APPEALS, WITHOUT AGREEING IN ALL RESPECTS WITH THE DISTRICT COURT'S ANALYSIS OF THE LIMITATIONS ISSUE, CORRECTLY AFFIRMS THAT JUDGMENT ON THE ADDITIONAL GROUNDS THAT DEFENDANT HAS NOT BREACHED ITS CONTRACT UPON WHICH THE PLAINTIFFS' ASSERTED CLAIMS WERE BASED AND IS OTHERWISE ENTITLED TO JUDGMENT, THERE IS NO NEED FOR FURTHER REVIEW BY THIS COURT.

As demonstrated previously, plaintiffs' asserted claims as to defendant Chrysler are hybrid §301/fair representation claims. With respect to hybrid §301/fair representation claims, it is now well established that a plaintiff is required to establish both a breach of the contract by the employer and a breach of the duty of fair representation by the union to impose liability on either the employer or the union. For example, in *Hines v. Anchor Motor Freight*, 424 U.S. 544 (1976), this Court, in clarifying additionally prior holdings, stated in pertinent part:

> To prevail against either the company or the Union, petitioners must not only show that their discharge was *contrary to the contract* but must *also* carry the burden of demonstrating *breach of*

> *duty* by the Union. As the District Court indicated this involves more than demonstrating mere errors in judgment.

Id. at 570-71 (emphasis added). More recently, in *DelCostello v. Teamsters*, 462 U.S. 151 (1983), this Court again dealt with these principles. There, in concluding that the federal statutory six-month statute of limitations governed hybrid §301/fair representation actions, this Court also reiterated:

> Such a suit, as a formal matter, comprises two causes of action. The suit against the employer rests on §301, since the employee is alleging a breach of the collective bargaining agreement. The suit against the union is one for breach of the union's duty of fair representation, which is implied under the scheme of the National Labor Relations Act. "Yet the two claims are inextricably interdependent. . . ." *Mitchell, supra*, at 66-67. . . . The employee may, if he chooses, sue one defendant and not the other; but the case he must prove is the same whether he sues one, the other, or both.

Id. at 164-65.

To have a valid hybrid §301/fair representation claim, then, it is not sufficient for a plaintiff to establish just one essential element or the other essential element; a plaintiff must establish both essential elements to impose liability on either the employer or the union. And, of course, if both essential elements are not established, as here, there can be no liability against either the employer or the union.

When such governing legal principles are coupled with the entire record in the instant action, the complete absence of any need for further review by this Court becomes, if possible, even more clear. Only several points will be reiterated here.

The district court, in concluding its detailed analysis of the material facts, determined that the decisive facts were "undisputed." April 16, 1986, Order at 27 (Appendix, at A 62). The district court then held that plaintiffs' asserted hybrid §301/fair representation claims as to defendant Chrysler were barred by the applicable six-month statute of limitations and did not reach other substantive issues. 29 U.S.C. §160(b) (1983).

As stated previously, the Sixth Circuit, without agreeing "in all respects" with the district court's analysis of the statute of limitations issue, affirmed the district court's judgment, but the Sixth Circuit so affirmed on additional grounds. As most pertinent here, the Sixth Circuit stated in part:

> As to defendant Chrysler, we are not prepared to affirm the district court's conclusion that the six months statute of limitation barred plaintiffs' claims *in all respects*. We find another basis, however, for affirming the judgment for defendant Chrysler—the plaintiffs' concession that there is no cause of action:
>
> > The Plaintiffs would only reiterate that if in fact this Court finds that the Plaintiffs' recall/seniority rights were eliminated in 1982 either because of the secret May and June, 1982 letter agreements or as a matter of law because of the alleged expiration of the 1979 Agreement, the Plaintiffs have no cause of action whatsoever against Chrysler Corporation for breach of contract.
>
> Plaintiffs Reply Brief at 11.
>
> We conclude, *under all the circumstances*, that *the district court reached a correct result in rendering a judgment for Chrysler*.
>
> . . .
>
> Our decision to affirm judgment for Chrysler is not based upon the district court's statute of

> limitations determination. . . . We have simply determined that *the record established that Chrysler did not violate its contractual responsibilities with respect to plaintiffs' claimed transfer rights*, and that neither Chrysler nor the UAW have fraudulently concealed from plaintiffs their asserted causes of action.

Chrysler, 834 F.2d at 581-82 (Appendix, at A 20-A 22) (emphasis added).

In view of all of the foregoing, it is clear beyond cavil that the district court's judgment was correctly and properly affirmed by the court of appeals on the additional grounds that defendant Chrysler has not breached its contract upon which the plaintiffs' asserted claims were based and is otherwise entitled to judgment. For these reasons alone, and there are more, there is no need, either real or imagined, for further review by this Court.

III. AFTER BOTH A DISTRICT COURT AND A COURT OF APPEALS HAVE FULLY EXAMINED AND CONSIDERED PLAINTIFFS' ASSERTED CLAIMS AND HAVE RENDERED DETAILED AND THOROUGH DECISIONS ADVERSE TO PLAINTIFFS, THIS COURT SHOULD NOT BE PERSUADED EITHER BY UNSUPPORTED AND UNSUPPORTABLE ARGUMENTS OR BY MEANINGLESS ARGUMENTS TO PERMIT FURTHER REVIEW AND THEREBY UNNECESSARILY TO BURDEN FURTHER ITS HEAVY DOCKET.

Since the basic reasons and authorities why defendant Chrysler was entitled to judgment in the district court have previously been set forth either by that court or by the Sixth Circuit, or by both of them, and also in this brief and remain unimpaired by the petition, those matters need not again be reiterated. Instead, this section of this brief will be confined to responding to the petition and only to those points which might possibly suggest any desirability of any response at all. So structured, this section of this brief will also not attempt to treat each and

every irrelevancy, transparency, and the like in the petition, which, in the absence of a requirement to do so, would only unduly and needlessly burden the Court.

Plaintiffs have advanced essentially the same arguments which were rejected either by the district court or by the Sixth Circuit, or by both of them. In the petition, such arguments are styled under four headings. Of plaintiffs' four arguments, the first and fourth relate to questions not necessary for decision by this Court, the second relates to a question not involving defendant Chrysler, and the third merely reflects the plaintiffs' meritless dissatisfaction and disgruntlement with the Sixth Circuit at having received another adverse decision. Each of these four arguments will be noted briefly below.

First, plaintiffs argue that the applicable six-month statute of limitations for their asserted hybrid §301/fair representation action should be tolled pending exhaustion of internal union grievance procedures. Petition, at 12-17. In effect, plaintiffs seek to render the applicable six-month statute of limitations a nullity.

Plaintiffs cite several decisions in which a possible "Catch-22" was mentioned. For numerous and various reasons, plaintiffs' argument should be rejected here.

Plaintiffs continue to fail to confront the fact that, if they had wanted to pursue their asserted hybrid §301/fair representation action and internal union grievance procedures, they were required to have done so in a proper and timely fashion, but that they did not do so. In language fully applicable here, this Court reiterated in *Electrical Workers v. Robbins & Myers, Inc.*, 429 U.S. 229, 237 n. 10 (1976), "in no way is this a situation in which a party has been prevented from asserting his or her rights." If plaintiffs had really been concerned about being so caught by a "Catch-22," they could simply have filed their asserted hybrid §301/fair representation action within the required statutory period and then have sought, if necessary, a brief stay of the same while exhausting their required internal union grievance procedures. Under

§101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. §411(a)(4)(1983), such internal union grievance procedures cannot be delayed "to exceed a four-month lapse of time." Such an alternative course would not only be in accordance with the applicable federal policy for the prompt resolution of labor disputes, but it would also encourage further the prompt resolution of internal union disputes through private means rather than through additional crowding of judicial dockets and would otherwise enhance the efficacy of both internal union grievance procedures and judicial procedures as to all such purported claims. *See also NLRB v. Marine Workers*, 391 U.S. 418, 426, 426 n. 8 (1968), where this Court stated that 29 U.S.C. §411(a)(4) (1983) is "a statement of policy that the public tribunals whose aid is invoked may in their discretion stay their hands for four months, while the aggrieved person seeks relief within the union . . ." and that "federal courts . . . often stay their hands while a litigant seeks administrative relief before the appropriate agency . . . [and] the requirement of exhaustion is a matter within the sound discretion of the courts."; *Johnson v. Railway Express Agency*, 421 U.S. 454, 465-66 (1975), where this Court, holding that the timely filing of a charge with the EEOC pursuant to Title VII (42 U.S.C. §2000e-5 (1983)) did not toll the running of the statute of limitations under 42 U.S.C. § 1981 (1983), stated, as to plaintiff's arguments that he would be compelled to take inconsistent and prejudicial positions, "that plaintiff in his § 1981 suit may ask the court to stay proceedings until the administrative efforts at conciliation and voluntary compliance [under Title VII] have been completed . . . [and] no policy reason [exists] that excuses petitioner's failure to take the minimal steps necessary to pursue each claim independently." Plaintiffs did not follow, and do not purport to have followed, such an alternative course here.

On its own foundation, then, plaintiffs' belatedly and hastily constructed "Catch-22" facade simply will not stand here. In any event, the Sixth Circuit did not base its

decision on plaintiffs' asserted arguments as to tolling, or indeed even on the statute of limitations. 834 F.2d at 582 (Appendix, at A 21).

Plaintiffs' tolling argument is, of course, also directly contrary to one of the leading federal labor policies, which is to promote the prompt resolution of labor disputes. *See, e.g., Auto Workers v. Hoosier Corp*, 383 U.S. 696, 707 (1966), where this Court stated that "the six months' provision governing unfair labor practice proceedings 61 Stat. 146, 29 U.S.C. §160(b), suggests that relatively rapid disposition of labor disputes is a goal of federal labor law."; *United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56, 63 (1981), where this Court stated "that the unfair representation claim made by an employee against his union even though his employer may ultimately be called upon to respond in damages for it if he is successful, is more a creature of 'labor law' as it has developed since the enactment of §301 than it is of general contract law ... [and] one of the leading federal policies in this area is the 'relatively rapid disposition of labor disputes'."; *DelCostello v. Teamsters*, 462 U.S. 151, 155 (1983), where this Court followed this principle in a hybrid §301/unfair representation action and held that the six-month provision of "§10(b) should be the applicable statute of limitations governing the suit, both against the employer and against the union." In addition, since defendant Chrysler has no control whatsoever as to those averred internal union grievance procedures, it would be singularly inappropriate (and also most unfair) to permit such argued tolling against defendant Chrysler.

Moreover, and as demonstrated previously, since there were no contractual (or other) violations by defendant Chrysler, there could not be a valid hybrid §301/fair representation claim here. *See DelCostello v. Teamsters*, 462 U.S. 151, 164-65 (1983); *Hines v. Anchor Motor Freight*, 424 U.S. 554, 570-71 (1976).

For all of the above-stated reasons, plaintiffs' tolling argument should be rejected. In any event, plaintiffs' toll-

ing argument is meaningless here, since, as demonstrated previously, the Sixth Circuit's decision, in unmistakable language, was based on other grounds: "Our decision to affirm judgment for Chrysler is not based upon the district court's statute of limitations determination." 834 F.2d at 582 (Appendix, at A 21).

Second, plaintiffs argue that they were denied Fifth Amendment procedural due process as to their purported "causes of action for breach of duty of fair representation founded on Section 9 of the National Labor Relations Act, 29 U.S.C. §159 (separate and apart from any §301 breach of contract claim), and the plaintiffs' right to vote, pursuant to Section 101 of the Labor Management Reporting and Disclosure Act, 29 U.S.C. §411, et seq. . . ." in that said causes were not adjudicated. Petition, at 18-22. In denying plaintiffs' petition for a rehearing, the Sixth Circuit stated in part: "The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case." *Chrysler*, No. 86-3361 (6th Cir. filed January 19, 1988) (Appendix, at A 67). In any event, plaintiffs' second argument does not aver any claims against defendant Chrysler, and any additional comments by defendant Chrysler as to this second argument would be both inappropriate and unwarranted.

Third, plaintiffs argue that the Sixth Circuit erred "when it held that defendant Chrysler Corporation did not violate its contractual responsibilities with respect to the Ohio plaintiffs' claimed transfer rights." Petition, at 22-26. The underlying faulty premises of this argument by plaintiffs have been previously exposed in this brief and elsewhere. Only a few comments, if indeed any, are appropriate with respect to such argument here.

As far as defendant Chrysler was concerned, defendant Union, as plaintiffs' "exclusive" collective bargaining agent, had both actual authority and apparent authority at all times as to all matters pertinent to this action. *See* 29 U.S.C. §159(a) (1983). *See also e.g., Emporium Capwell Co.*

v. Community Organization, 420 U.S. 50 (1975); *NLRB v. Allis-Chalmers Manufacturing Co.*, 388 U.S. 175 (1967), *reh'g denied*, 389 U.S. 892 (1967); *Medo Corp. v. Labor Board*, 321 U.S. 678 (1944); *J. I. Case Co. v. Labor Board*, 321 U.S. 332 (1944). In addition, the Sixth Circuit properly and correctly stated:

> Chrysler had every reason to believe its position was made known. . . .
>
> . . .
>
> . . .In the context of the economic conditions then faced by Chrysler and the sale of its defense unit to a new and unrelated employer in early 1982, we find the arrangement worked out by UAW with Chrysler and with GD, the purchaser of the Lima plant, as a matter of law to constitute neither a conspiracy nor a fraud operating against the interests of former Chrysler employees. . . . There was no "affirmative" act of concealment.
>
> . . .In any event, we find that Chrysler had a right to rely upon its agreement with the Union absent clear notice that the Union was acting in bad faith against the interests of its members. There is no such indication here.
>
> . . .[T]he record established that Chrysler did not violate its contractual responsibilities with respect to plaintiffs' claimed transfer rights, and that neither Chrysler nor the UAW have fraudulently concealed from plaintiffs their asserted causes of action.

834 F.2d 579, 581-82 (Appendix, at A 14, A 20-A 22).

In apparent recognition of the fatal flaws in this third argument, plaintiffs then also argue that "the Sixth Circuit did not consider the intent of the drafters of the letters of understanding." In view of the numerous and repeated references to "September 14, 1982," in each of the two letters of understanding, the "intent" of the parties to each could hardly have been more clear. Even so, plaintiffs

also grudgingly recognize, as they must, that the Sixth Circuit did "consider the intent of the drafters." Petition, at 24. In discussing plaintiffs' arguments, and also in rejecting them, the Sixth Circuit specifically referred to "intent" and stated: "Plaintiffs argue that the 1982 letter agreements were not *intended* to alter the 1979 CBA." 834 F.2d at 581 (Appendix, at A 17) (emphasis added). And, of course, such reference to "intent" does not stand alone, but rather it appears within a comprehensive analysis by the Sixth Circuit.

Despite all of the foregoing (or, perhaps because of all of the foregoing), plaintiffs still suggest that there was not enough reported analysis by the Sixth Circuit as to "intent" in terms of such factors as the "context" which gave rise to these two letter agreements and the "actions" of the parties thereunder. Petition, at 25. Even with lengthy and thorough opinions, such as those rendered here by both the district court and the Sixth Circuit, a court cannot be expected to detail all of the minutiae as to each and every issue, or supposed issue, which it has considered. If the Sixth Circuit would have written still more as to "intent" in terms of such stated factors as "context" and "actions," such additional details would have only further underscored the correctness of its decision that "under *all* the circumstances . . . the district court reached a correct result in rendering a judgment for Chrysler." 834 F.2d at 581 (Appendix, at 20) (emphasis added). Plaintiffs' inappropriate and unwarranted suggestions that such additional burdens must be assumed by an ever-increasingly busy judiciary should be quickly rejected in any event.

Fourth, plaintiffs argue that they were entitled to a jury trial as to certain of their averred causes. Petition, at 26-30. Both the district court and the Sixth Circuit have held that defendants were entitled to summary judgment. As a result, plaintiffs' argument, even if it were otherwise valid, raises only moot issues now. Consequently, it is not necessary now to determine whether or not plaintiffs would have otherwise been entitled to a jury trial on these av-

erred causes. Defendants were properly granted summary judgment. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Matsushita Electric Industrial Co. v. Zenith Radio*, 475 U.S. 574 (1986). The Sixth Circuit correctly and properly affirmed that judgment.

When, as here, both a district court and a court of appeals have fully examined and considered plaintiffs' asserted claims and have rendered detailed and thorough decisions adverse to plaintiffs, this Court should not be persuaded either by unsupported and unsupportable arguments or by meaningless arguments to permit further review and thereby unnecessarily to burden further its heavy docket. Under these circumstances, further review is neither warranted nor appropriate, and it should be declined.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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May 9, 1988

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the petition and appendix herein were received for respondent Chrysler Corporation by priority mail on April 8, 1988, and that three copies of the foregoing brief have been mailed first class postage prepaid this 9th day of May, 1988, to Gordon A. Senerius, Esq., counsel of record for petitioner herein, at his office at 3450 West Central, Suite 336, Toledo, Ohio 43606, and also to Gerald B. Lackey, Esq., counsel of record for respondent unions herein, at his office at Lackey, Nusbaum, Harris, Reny & Torzewski, L.P.A., Two Maritime Plaza, Third Floor, Toledo, Ohio 43604.

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